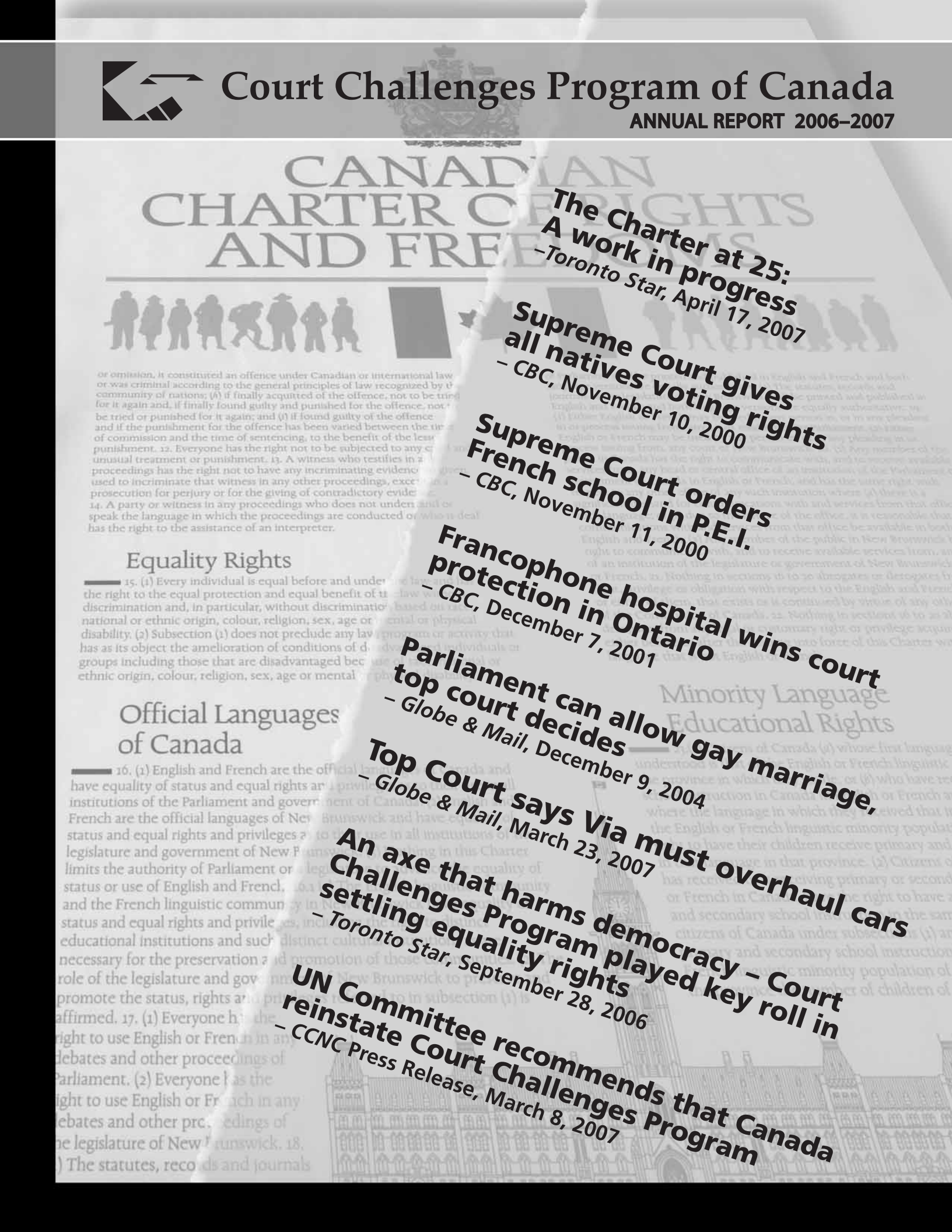
Court Challenges Program of Canada

ANNUAL REPORT 2006–2007



Annual Report

2006–2007

COURT CHALLENGES PROGRAM OF CANADA

PROGRAMME DE CONTESTATION JUDICIAIRE DU CANADA

The Court Challenges Program of Canada envisions a nation in which the equality rights of historically disadvantaged groups and the language rights of official language minorities are recognized and implemented so that all Canadians can actively and equally participate in our society.

To promote this vision, the CCPC's mission is to provide dynamic support to strategic and innovative test case litigation.

The Court Challenges Program of Canada/
Programme de contestation judiciaire du Canada
is funded by
the Department of Canadian Heritage of the Government of Canada.

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Foreword

For more than ten years, the Court Challenges Program (Program) had been granting financial assistance to individuals and groups who felt adversely affected in matters of language or equality rights; with these funds, they could develop test cases of national significance aiming to clarify their rights, as set out in the Canadian Constitution. Thus, the Program grew to be an essential mechanism for promoting access to justice in Canada.

On September 26, 2006, the Conservative Government abolished the Program, a decision that triggered widespread outcry. A vast number of people condemned this action as once again undermining access to justice.

In a speech on August 11, 2007, Chief Justice McLachlin highlighted the importance of access to justice, stating that "it is the essential foundation for our legal system to function and to maintain the confidence of the public it serves".

The Chief Justice regretted that access to justice had become increasingly difficult for middle income Canadians because of the frequently prohibitive costs of court challenges. She expressed her belief that the solution lays in joint efforts made by the bench, bar associations, governments and the administration of justice. She emphasized that:

> *It is necessary that all the facets of the justice system can together provide Canadian men, women and children with excellent and affordable justice. There is no point in relying on a cutting edge justice system if people cannot benefit from it.*[1]

Likewise, what is the rationale behind the entrenchment of a *Canadian Charter of Rights and Freedoms* that protects language and equality rights, if these *Charter* guarantees can be bypassed without providing for meaningful remedies in support of victims?

Charter rights and freedoms must be significant and purposeful. As guardians of the Constitution, courts alone are entitled to determine the scope and significance of these rights and freedoms. If affected parties cannot use courts, then what is left of access to justice or the protection of our fundamental rights and freedoms?

In April 2007, Canadians celebrated the 25th anniversary of the *Charter*. Many renowned individuals attempted to articulate and promote the importance of *Charter* rights, the breadth of values underlying these rights, and the Charter's impact on the daily lives of ordinary people. Her Excellency the Right Honourable Michaëlle Jean, Governor General of Canada, stated that:

> *A cardinal principle of democracy is the duty of the State to protect and guarantee the basic rights and freedoms of its citizens.*
>
> *[…]*
>
> *More and more, we are hearing alarm bells ringing, calling upon us to stay fast to our shared commitment to democracy, justice and freedom.*
>
> *[…]*
>
> *So, I believe that it is now more than ever that we must resist the temptation to deny our fellow citizens their most basic rights.*
>
> *It is now more than ever that we must answer the cries of vulnerable groups seeking full access to justice.*
>
> *It is now more than ever that we must reconnect with our shared history of struggle for freedom and justice, so that we do not repeat the mistakes of the past.*[2]

The *Charter* is an integral part of our shared identity. It significantly conveys the values of diversity, tolerance, freedom and justice, which are fundamental values of Canadian society. Both in relation to equality rights and language rights, the underlying values of the *Charter* resonate across the country, because they refer to fundamental rights.

Financial assistance under the Program promoted the clarification and assertion of language rights for official language minorities and equality rights for disadvantaged groups regarding issues of national significance. By enabling people to challenge the government using the *Charter* guarantees, the Program had a critical and positive impact on the protection of rights and freedoms for all Canadians. The Program's cancellation jeopardizes the future of language and equality rights in Canada.

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1 Speech, August 11, 2007, Calgary, Alberta, Canadian Bar Association

2 Speech on the Occasion of the Opening of the Association for Canadian Studies Conference "Canadian Rights and Freedoms: 25 Years under the Charter", Ottawa, April 16, 2007.

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Message from the Chair

If I had to qualify this past year, I would use the expression "*Annus horribilis*" as did a well-known British personality. It is rather unpleasant to supervise the dismantling of an organization and program which every evaluation and a great majority of Canadian society deemed to be effective, useful and efficient.

The Court Challenges Program has spearheaded the ongoing clarification of language and equality rights. Important victories achieved by various groups would never have occurred if not for the resources provided by the CCPC. It is not overly pretentious to assert that this program was instrumental in improving our country's growth and fairness.

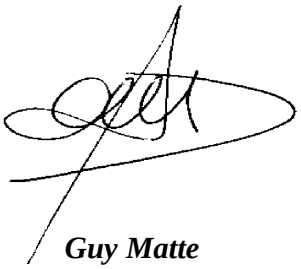
We can already observe the adverse consequences of the Government's unfortunate decision. Cases are being abandoned, whether at the development or appeal level. In some instances, we have witnessed deleterious strategies used by some provincial and territorial governments to deplete claimants' resources, knowing full well they can no longer rely on the CCPC.

Access to justice is fundamental to our democracy. Trust which individuals and various components of Canadian society put in the justice system is at the very basis of our social stability. The CCPC's termination is justice denied for a great many citizens. We are all weakened by this turn of events.

During the past year, the board of director has made presentations before numerous groups, including legal experts and practitioners, parliamentarians and journalists, to explain its objectives and approach. Few days have gone by without the printed or written media highlighting the fact that the government had abolished a program that was important for Canadians. Furthermore, in rare occasions where media coverage was negative, we immediately followed up to set the record straight.

Despite these difficult circumstances, members, staff in the Winnipeg office, as well as volunteers from panels and advisory committees, all carried on and supported cases started before September 25, 2006, that had qualified for funding from the Program. And we are still doing so. Noël Badiou and his small team must be highly praised for persevering and maintaining the highest standards of services and support to eligible cases.

In particular, I want to thank all members of the board for their availability, support and commitment to the Court Challenges Program of Canada. If this should be our last annual report, we must still hold our heads high and be proud of our enormous contribution to the clarification of language rights for official language minorities and equality rights for disadvantaged groups in Canada.



Guy Matte
Chair of the Board of Directors

Message from the Executive Director

The Court Challenges Program of Canada (CCPC) experienced a major shock during the 2006/2007 fiscal year. Without prior consultation, warning or notice, the Court Challenges Program was eliminated during the Treasury Board's announcement on September 25, 2006 of the Federal Government's 2006 Expenditure Review. The main reasons stated for eliminating the Court Challenges Program were that it was 'wasteful, not effective and did not achieve results'.

These stated reasons were in stark contrast to the independent evaluation and review of the Court Challenges Program (Program) that was conducted by Prairie Research & Associates in 2002/2003. The conclusions and recommendations in this evaluation stated that the Program was addressing "the need that led to the Program's creation. The activities of the Program are consistent with strategic objectives established by the Department [of Heritage] in April 2000, particularly those relating to citizens' engagement and the promotion of official languages." The evaluation added that "(t)he evidence collected indicates that the Program has an effective management structure in place, and that the procedures followed to review applications and allocate funding do reflect good practices in that field." In addition, the evaluation noted that:

> *"(t)he Program has been successful in reaching out to members of linguistic minorities and disadvantaged Canadians… The Program has also been successful in supporting important court cases that have had a direct impact on the implementation of rights and freedoms covered by the Program. The evaluation indicates that many of these court cases would never have been brought to the attention of the Courts without the Program…"*[1]

Following this positive evaluation, the Program was renewed for a further five years by way of a new Contribution Agreement signed with Canadian Heritage in November 2004. The decision to eliminate the Program less than two years later therefore would appear unfounded. Ironically, it also appeared wasteful given the overwhelmingly negative reaction from affected communities that had not been consulted and the expenditure of public resources to defend the decision both in response to certain complaints made to the Office of the Commissioner of Official Languages and also to a judicial review of the government's decision launched by the Fédération des communautés francophones et acadienne (FCFA).

There were 114 complaints submitted to the Office of the Commissioner of Official Languages (OCOL), which prompted an in-depth review of the government's decision to cancel the Program. In October of 2007, the OCOL released its final report confirming the importance of the Court Challenges Program and calling upon the Government of Canada to reconsider its decision. The report contained a separate assessment and review of the Court Challenges Program and concluded that it:

> *"has played a positive role during its existence in several ways. Not only did it facilitate access to justice for official language communities and contribute to the clarification and implementation of constitutional language rights in Canada, but it was also an essential unifying tool for minority associations and groups."*[2]

The CCPC also did its part in attempting to impress upon the government the vital role that the Program played in providing Canada's historically disadvantaged individuals and groups and official minority language communities with access to justice. In this regard, the CCPC requested meetings with the Ministers of Heritage, Justice and Official Languages to discuss the Program and dispel erroneous and inaccurate perceptions. Although the CCPC was not granted the meetings requested, Board members volunteered their time to make presentations to the Standing Committees on Justice, Official Languages and Canadian Heritage. In addition, the CCPC readily provided information about the Program, its mandate and role as

an important access to justice tool to various people as well as the media who inquired about the Program following its elimination.

With this in mind, we present the 2006/2007 annual report of the Court Challenges Program of Canada and are saddened that this may be the last report regarding the Program.

The cancellation was in relation to any new funding under the Court Challenges Program; the Government of Canada said that it would maintain its commitments with respect to the grants that were awarded prior to September 25, 2006.

Accordingly, it should be noted that the information contained in this report relating to new grants under the Court Challenges Program relate to the period beginning on April 1, 2006 and ending on September 25, 2006.

This annual report also includes information about cases that were decided and activities that occurred during the entire fiscal period from April 1, 2006 through to March 31, 2007 as these related to the grants that were awarded prior to September 25, 2006. As with the last two annual reports, this year's report follows the new format and we hope that this 13th edition is as informative, useful and easy to follow. We would also like to encourage readers to visit our website at *www.ccppcj.ca* to learn more about the Program and the resources still available.

In the period from April 1, 2006 to September 25, 2006, the CCPC received a total of 61 applications. As noted in my comments last year, the statistical information from this brief period is consistent with that of previous years wherein the majority of applications for equality rights funding include four main grounds of historical disadvantage: Aboriginality, race, disability and sex. These figures continue to make the case that there are ongoing inequalities in federal laws, policies and practices that need to be addressed for Canadians belonging to these groups.

The statistical information relating to applications for language rights funding also confirmed, as was the case last year, that the majority of applications relate to the area of education in the official minority language. One need only review the ongoing cases in our various provinces to quickly conclude that there is much more to be done by provincial and federal governments in providing official minority language communities in Canada with adequate educational and governmental services. Further evidence of this was detailed in the final report from the OCOL.

When considering the cases described in this annual report along with those listed in previous annual reports, it seems almost trite to say they emphasise the importance of the Court Challenges Program as providing a means of accessing justice to Canadians without any other means of having their voice heard in regards to their fundamental equality and language rights.

One can only hope that the government hears the voices of those that the Program was meant to assist and agree to reinstate the Program as was recommended by the Commissioner of Official Languages.

Finally, the CCPC experienced a significant impact on its staff and resources following the elimination of the Program in September 2006. The rapid reduction in staff put additional pressures on remaining staff to administer the ongoing work relating to grants made prior to September 25, 2006 as well as respond to the flood of inquiries received following the Treasury Board announcement. I want to extend a heartfelt thank you to former staff members Richard Goulet, Michelle Tessier, Hope Buset, and Elias Mukozi, who would still be with us had the Program not been cancelled. All staff that joined the Program during its years of operation did so because of a personal belief in the fundamental rights to equality of all Canadians as well as constitutional official minority language rights. A passion for these ideals was a common thread for us all and made this such a terrific place to work. As we continue to operate for the time being in the processing of the ongoing grants made prior to September 25, 2006 with our reduced staff, I also want to

express my gratitude to remaining staff members Susan Joanis, Ken Oh and Kodié Keita, two of whom are only working part time, for their continuing dedication and moral support.

I would be remiss if I did not also mention that there are numerous other individuals including volunteer Panel members Sharry Aiken, Raj Anand, Gabriel Arsenault, André Braën, Lorena Fontaine, Linda Jones, André Ouellette, Dianne Pothier, Léo Robert, Robert Saint-Louis, Charles Smith and Kathleen Tansey all of whom have maintained their commitment to the Program by agreeing to volunteer on their respective Panel. In addition, there are the Advisory Committee members, CCPC members, as well as long-time Friends of the Program who have demonstrated their unwavering support for the Program over the years and especially following its elimination. Some of these individuals coordinated letter-writing campaigns in support of the Program including setting up a website. I know that those actions have not gone unnoticed and were very much appreciated by the CCPC's members and supporters.

In closing, I also want to express my deepest appreciation to the members of the Board: Guy Matte, Ken Norman, Linda Jones, Kathleen Tansey, Sanda Rodgers, Michael Bergman and Bonnie Morton for their unwavering support and dedication during these turbulent and uncertain times. The CCPC's volunteer Board members went above and beyond the call of duty in supporting and defending the Program over this past year and in particular following the announcement on September 25th. Their continued support and participation continues to this day…

Noël A.J. Badiou
Executive Director

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1 Summative Evaluation of the Court Challenges Program, 2003

2 Final Investigation Report: Investigation of Complaints Concerning the Federal Government's 2006 Expenditure Review, Office of the Commissioner of Official Languages, (October 2007)

Administration

During the 2006/2007 fiscal year, the number of applications for funding under the Equality Rights Program decreased significantly from 111 the previous year to 45 as a result of the cancellation of the Program on September 25, 2006 which followed the second Equality Rights Panel meeting of the fiscal year. A number of applications that did not make it on the September 16th meeting agenda had been tabled to the following meeting of the Equality Rights Panel, which was to be held in November. Unfortunately, because of the intervening cancellation of the Program, these applications could not be considered. As regards the Language Rights Program, the number of applications similarly fell from 31 to 16 for the same reason. As with several equality rights applications, a number of language rights applications that had been scheduled for the November meeting of the Language Rights Panel could not be considered because of the cancellation.

The CCPC fulfilled all of its reporting obligations under the Contribution Agreements signed in November 2004 and in this regard provided the Annual Activity Reports to Canadian Heritage for the 2005/2006 fiscal year as well as submitted regular quarterly reports.

PROGRAM STRUCTURE AND COMPOSITION

The Court Challenges Program of Canada is a national not-for-profit corporation whose mandate is to clarify and advance constitutional rights and freedoms related to equality and minority official language rights by providing financial assistance for test cases of national significance.

The management of the Court Challenges Program is overseen by a national Board of directors whose members serve on a voluntary basis.[1] In view of the importance of the mandate and the diverse communities that the Program serves, the Board has established a number of Committees to assist it in carrying out its functions.

The Program's main function is to consider applications for funding and provide funding to successful applicants. Two independent panels of experts, the Language Rights Panel and the Equality Rights Panel, make the funding decisions. Two independent Panel Selection Committees, whose members are appointed by the Board, select members for each of the panels respectively.

There are four categories of members: Equality Members, Language Members, Director Members and Associate Members. The membership meets at the Annual General Meeting to conduct the CCPC's corporate business, including the election of Board of Director members. The membership groups have established an Equality Advisory Committee and a Language Advisory Committee. These committees provide information on Program-related issues of interest to their members and advise the Board on policy issues throughout the year.

Staff located at the Court Challenges Program of Canada's office in Winnipeg supports the work of the Board, the panels and the committees.

The following sections briefly describe the activities performed by the board, panels, committees and staff members during the 2006/2007 fiscal year.

The Board of Directors

The Board of Directors is responsible for the administration of the Court Challenges Program, including the budget, human resources management, the establishment of policies, as well as the short and long-term plans for the effective operation of the Program.

There are seven positions on the Board of Directors. Two Directors are elected by the Equality members; two Directors are elected by the Language Members; one Director is appointed by the Law Faculties and Bar Associations across Canada; and one co-chairperson for each of the

[1] A detailed listing of Board, panels, committees and staff members is provided in Appendix C.

Equality Panel and the Language Panel is appointed a Director. At the Annual General Meeting, the Program Members confirm the appointments of the Directors. Directors hold office for three years or until their successors are appointed and confirmed.

The Panel Selection Committees

When there are vacancies on the Panels, equality members and language members of the Program are invited to submit nominations to the Language and Equality Panel Selection Committees. The Selection Committees are appointed by the Board and are composed of leading Canadians with broad knowledge in the equality rights and language rights fields. It is their job to ensure that the funding Panels are representative and that they are composed of members with expertise, experience, and vision.

The Panels

The Language Panel

The Language Panel reviews funding applications and makes all decisions regarding case and project funding related to language rights test cases. Its five members have expertise in language rights and official language minority communities in Canada and bring to the Panel expertise in language rights issues as well as considerable experience with a broad range of language rights groups.

The Equality Panel

The Equality Panel reviews funding applications and makes all decisions regarding case and project funding that involve equality rights test cases. Each of its seven members brings to the Panel expertise in equality and human rights issues as well as considerable experience with a broad range of equality-seeking groups.

The Program Members

The membership of the CCPC includes both equality rights and language rights members. Organizations whose primary mandate is to promote the substantive equality rights of disadvantaged groups, or the language rights of Canada's official language minority communities, are eligible to become members of the Program. Other groups and individuals can become associate members. Members of the Program participate in the election of the Board of Directors, can sit on the Advisory Committees and submit nominations for appointments to the Equality Rights and Language Rights Panels.

On April 1, 2007, the Court Challenges Program of Canada's membership was composed of 18 Language Members, 60 Equality Members and one Associate Member.

The Advisory Committees

There is an Equality Advisory Committee and a Language Advisory Committee. Members of these Committees are chosen respectively by the equality members and the language members of the CCPC. The function of these Committees is to provide the Board with membership input, and to disseminate information about the Program to the wider community.

The Staff Members

From the period beginning April 1, 2006 to September 25, 2006 staff members worked closely with the two Panels to process funding applications and prepare the required analysis of these applications to support the work of the two Panels. In addition, the staff managed the ongoing affairs of the Program during the entire fiscal period, including regular reports to the Board of Directors and to the Department of Canadian Heritage. The staff also planned and organized the 2006 Annual General Meeting held in March of 2007.

During the period beginning April 1, 2006 to October 5, 2006, the Court Challenges Program of Canada employed eight full time individuals. Following the September 25th announcement, there were a number of staff changes. As noted above, Richard Goulet, Michelle Tessier, Hope Buset and Elias Mukozi resigned following the announced cancellation to pursue new opportunities. We wish them the very best in their future endeavours. Following Elias' resignation, Maminata Dembélé was hired on a part time basis to help fulfill the accounting requirements in processing the grants existing prior to September 25, 2006.

PROGRAM PRIORITIES AND PLANNING

During the period beginning April 1, 2006 to September 25, 2006, staff proceeded with the implementation of the CCPC's 2006 renewed strategic plan. As with the earlier plan, the five priority areas that had previously been identified as of continuing importance to the CCPC were slated to be pursued as follows:

- Assisting applicants
- Encouraging strategic litigation and information-sharing
- Outreach for applications
- Developing public, political and financial support for long-term funding and mandate expansion
- Organizational support and development.

The responsibility for each of these initiatives was shared amongst the CCPC's committees, panels, and staff. The following provides a brief overview of the efforts made in each of these areas during the first six months of the 2006/2007 fiscal year.

Assisting Applicants

The priority of improving assistance to applicants this past year was met by staff continuing to enhance the wording of letters related to decisions and other matters, as well as various documents with a view to using plain language and ensuring that the application process was as user-friendly as possible.

Encouraging Strategic Litigation and Information-sharing

Unfortunately, the CCPC's main opportunities for encouraging strategic litigation and information-sharing occur during its national consultation which is normally held in November but was cancelled following the announcement on September 25, 2006. There were, however, a few new strategic litigation consultations for Equality and Language members that had been funded prior to September 25, 2006.

While some additional work was conducted towards the establishment of a Factum bank, the work was abruptly halted following the Program's cancellation.

Outreach for Applications

During the first six months of the 2006/2007 fiscal year, the CCPC focused some of its resources on creating a new outreach plan with a view to increasing its outreach activities. In this regard, a student was hired during the summer months to help put together the new plan and come up with new ideas to reach out to historically disadvantaged groups and official minority language communities that had not previously been aware of the Program and the tools available. Unfortunately, the work under this project was halted following the Program's cancellation in September.

In addition, during the summer of 2006, staff worked on the planning and organizing of the 2006/2007 National Consultation and AGM. The theme chosen was to relate to media and media relations. Unfortunately, this project was also halted following the cancellation of the Program in September and the National Consultation did not take place.

Finally, staff members were also in negotiations with the CCPC's website hosting company to update and simplify the website but this project was also halted following the cancellation.

Developing Public, Political and Financial Support for the CCPC's Access to Justice Project

Very early in the 2006/2007 fiscal year, the Board sent several letters to various key political figures with each of the major political parties requesting meetings with a view to informing politicians about the Court Challenges Program and its importance in providing access to justice for Canada's historically disadvantaged individuals and groups and official minority language communities. A package of materials about the Program was included with the letter outlining the value and efficiency of the Program and how it helped increase democratic participation by giving a voice to those individuals and groups that would not otherwise be heard.

While these efforts continued over the course of the summer, the CCPC was unfortunately not successful in securing any meetings with key ministers and on September 25, 2006, the Treasury Board President announced the cancellation of the Program.

Organizational Support and Development

The vast majority of the CCPC's functions relate to the day-to-day work of facilitating the application process, ensuring timely consideration of applications, managing over 350 active equality files and over 85 active language files, fulfilling reporting requirements to Canadian Heritage and so on.

During the 2006/2007 fiscal year, staff compiled and organized statistical information for the 2005/2006 Annual Activity Report to the Department of Canadian Heritage and continued work on updating its membership lists with a view to encouraging the renewal of memberships that had lapsed.

ANNUAL GENERAL MEETING 2005/2006

As noted above, the 2006 National Consultation and AGM that had been scheduled for November 24, 25 and 26, 2006 were cancelled following the announcement on September 25, 2006. Planned activities included a seminar on the role of the Court Challenges Program as an access to justice tool, a plenary on 'Rights Advocacy in the Public Domain', workshops on current and emerging trends in equality and language rights jurisprudence and a plenary on 'Communication in the 21st century and its impact on rights-based litigation'. This would have been a most timely and valuable consultation but for the cancellation of the Program. It is hoped that the work put into the planning and organizing will one day be revived as these topics will no doubt be of timeless value.

The CCPC however, rescheduled the 2005/2006 AGM for March 25, 2007 in Ottawa. Approximately 33 individuals attended the meeting during which the Board reported on the CCPC's activities in relation to the 2005/2006 fiscal year as well as discussed the events and activities following the September 25th announcement. There were no elections required as none of the Board member's terms had expired.

Finally, there were expressions of appreciation for all the work and dedication that the Board and Staff members have demonstrated over the course of these difficult and uncertain times.

AUDITED FINANCIAL STATEMENTS

The following are the CCPC's audited financial statements for the year ended March 31, 2007. The statements consist of four main items:

1. **The Balance Sheet** – contains a breakdown of each fund.
2. **The Statement of Operations and Fund Balances** – provides a detailed list of monies received, transferred and disbursed in each funding category.
3. **Notes to the Financial Statements**

   Note 1 includes information about the incorporation of the CCPC and its Contribution Agreement.

   Note 2 explains the going concern assumption.

   Note 3 explains significant accounting policies and describes each of the funds, how they are accounted for, and how the revenue is recognized.

   Note 4 explains how capital assets are recorded.

   Note 5 explains the externally restricted fund balances and provides the breakdown between equality and language rights in each of the funds.

   Note 6 shows the CCPC's cumulative commitments from October 1994, which includes Panel commitments in 2006/2007 and the CCPC's lease commitment.
4. **Schedule of Operating Expenses** – shows the expenses for the CCPC's administrative monies.

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June 13, 2007

Auditors' Report

To the Board of Directors of
Court Challenges Program of Canada -
Programme de contestation judiciaire du Canada

We have audited the balance sheet of **Court Challenges Program of Canada - Programme de contestation judiciaire du Canada** as at March 31, 2007 and the statement of operations and fund balances for the year then ended. These financial statements are the responsibility of management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with Canadian generally accepted auditing standards. Those standards require that we plan and perform an audit to obtain reasonable assurance whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation.

In our opinion, these financial statements present fairly, in all material respects, the financial position of Court Challenges Program of Canada - Programme de contestation judiciaire du Canada as at March 31, 2007 and the results of its operations for the year then ended in accordance with Canadian generally accepted accounting principles.

PricewaterhouseCoopers LLP

Chartered Accountants

PricewaterhouseCoopers refers to the Canadian firm of PricewaterhouseCoopers LLP and the other member firms of PricewaterhouseCoopers International Limited, each of which is a separate and independent legal entity.

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada

Balance Sheet

As at March 31, 2007

	Operating Fund $	Litigation Fund $	Program Promotion and Access and Negotiation Fund $	Case Development Fund $	Externally restricted funds: Impact Studies Fund $	Internally restricted fund: Access to Justice Fund $	2007 Total $	2006 Total $
Assets								
Cash	117,668	(64,149)	27,539	8,329	47,717	20,746	157,850	328,339
Accounts receivable	1,857	37,360	859	1,997	708	-	42,781	47,066
Prepaid expenses	1,787	-	-	-	-	-	1,787	11,020
	121,312	(26,789)	28,398	10,326	48,425	20,746	202,418	386,425
Capital assets (note 4)	17,063	-	-	-	-	-	17,063	27,528
	138,375	(26,789)	28,398	10,326	48,425	20,746	219,481	413,953
Liabilities								
Accounts payable and accrued liabilities	66,763	107,169	48,458	-	-	-	222,390	161,155
Fund Balances								
Restricted								
Internally	-	-	-	-	-	20,746	20,746	20,746
Externally (note 5)	-	(133,958)	(20,060)	10,326	48,425	-	(95,267)	149,593
Invested in capital assets	17,063	-	-	-	-	-	17,063	27,528
Unrestricted	54,549	-	-	-	-	-	54,549	54,931
	71,612	(133,958)	(20,060)	10,326	48,425	20,746	(2,909)	252,798
	138,375	(26,789)	28,398	10,326	48,425	20,746	219,481	413,953

Approved by the Board of Directors

Director

Director

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada

Statement of Operations and Fund Balances

For the year ended March 31, 2007

	Externally restricted funds					Internally restricted fund	2007	2006
	Operating Fund $	Litigation Fund $	Program Promotion and Access and Negotiation Fund $	Case Development Fund $	Impact Studies Fund $	Access to Justice Fund $	Total $	Total $
Revenue								
Contributions								
Government of Canada, Canadian Heritage	593,000	1,507,346	167,900	93,000	33,358	-	2,394,604	2,722,960
Interest and other income	124	-	-	-	-	-	124	1,005
CCS Project Jeunesse (Young Canada Works)	3,842	-	-	-	-	-	3,842	-
HRSDC (Summer Career Placement Initiative)	3,561	-	-	-	-	-	3,561	-
	600,527	1,507,346	167,900	93,000	33,358	-	2,402,131	2,723,965
Expenses								
Operating (Schedule)	611,374	-	-	-	-	-	611,374	751,512
Program delivery	-	1,715,969	206,075	104,564	19,856	-	2,046,464	1,919,973
	611,374	1,715,969	206,075	104,564	19,856	-	2,657,838	2,671,485
Excess (deficiency) of revenue over expenses for the year	(10,847)	(208,623)	(38,175)	(11,564)	13,502	-	(255,707)	52,480
Fund balance - Beginning of year	82,459	74,665	18,115	21,890	34,923	20,746	252,798	200,318
Fund balance - End of year	71,612	(133,958)	(20,060)	10,326	48,425	20,746	(2,909)	252,798

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada

Notes to Financial Statements

March 31, 2007

1 Incorporation and contribution agreement

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada ("the Corporation") is a corporation incorporated without share capital under Part II of the Canada Corporations Act. The Corporation's objective is to clarify the constitutional rights and freedoms related to equality rights and official language rights by providing financial assistance for test cases of national significance. The Corporation is non-taxable under Section 149 of the Income Tax Act.

The Corporation entered into a contribution agreement with the Government of Canada, Department of Canadian Heritage ("Canadian Heritage") on November 16, 2004 which sets out terms and conditions governing the administration of the Corporation for the period April 1, 2004 to March 31, 2009 (see note 2).

The Corporation is a registered charity under the provisions of the Income Tax Act of Canada.

2 Going concern assumption

As part of its review of federal programs, the Government of Canada announced the termination of the Court Challenges Program on September 25, 2006. The Corporation ceased entering into any new funding commitments as of that date.

The Corporation has been working with Canadian Heritage on determining the terms and processes of the cessation of the program, including the administration of existing commitments.

Additional costs will be associated with the termination of the Court Challenges Program. These costs have not been finalized and consequently, are not included in these financial statements.

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada

Notes to Financial Statements
March 31, 2007

3 Significant accounting policies

Basis of presentation - fund accounting

The accounts of the Corporation are maintained in accordance with the principles of "fund accounting". Fund accounting is a procedure whereby a self-balancing group of accounts is provided for each accounting fund established by the Corporation.

For financial reporting purposes, the accounts have been classified into six funds. The activities carried out by each fund are as follows:

Operating Fund

The Operating Fund accounts for the Corporation's administrative activities and reports restricted resources and operating grants.

Litigation Fund

The Litigation Fund reports restricted resources that are to be used to provide financial assistance for litigation expenses incurred for language and equality cases of potential national significance.

Program Promotion and Access and Negotiation Fund

The Program Promotion and Access and Negotiation Fund reports restricted resources that are to be used for activities which promote awareness of, access to, or capacity to use the Program and provide financial assistance to individuals or organizations for negotiating expenses incurred to resolve disputes.

Case Development Fund

The Case Development Fund reports restricted resources that are to be used to provide financial assistance to develop potential language or equality test cases.

Impact Studies Fund

The Impact Studies Fund reports restricted resources that are to be used to provide financial assistance for the preparation of impact studies of important court decisions relevant to litigation under the Program.

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada

Notes to Financial Statements
March 31, 2007

Access to Justice Fund

The Access to Justice Fund reports restricted resources that are used for fundraising activities aimed at establishing a permanent fund to ensure the continued existence of the Court Challenges Program and at exploring the possibility of expanding the Corporation's activities to finance test cases of national significance not currently listed in the Contribution Agreement with Canadian Heritage, such as cases involving section 15 equality issues at the provincial level.

Revenue recognition

The Corporation follows the restricted method of accounting for contributions.

Restricted contributions related to general operations are recognized as revenue of the Operating Fund in the year the expenses are incurred. All other restricted contributions are recognized as revenue of the appropriate restricted fund.

Unrestricted contributions are recognized as revenue of the Operating Fund in the year received or receivable if the amount to be received can be reasonably estimated and collection is reasonably assured.

Investment income is recognized on an accrual basis as revenue of the Operating Fund. Investment income earned on contributions received under the agreement, dated November 16, 2004, with Canadian Heritage is accrued annually. The cumulative interest earned will be deducted from the last contribution payment received from Canadian Heritage under the wind-up process.

Capital assets

Capital assets are recorded at cost. Amortization is provided over the estimated useful lives of the related assets, using the following methods and rates:

Computer equipment	5 year straight-line, no residual value
Furniture and equipment	5 year straight-line, no residual value
Leasehold improvement	5 year straight-line, no residual value

Accounts payable

The Corporation accrues program delivery costs as expenses once the invoices have been approved for payment by the applicant.

Financial instruments

Financial instruments include cash, accounts receivable and accounts payable and accrued liabilities. Unless otherwise noted, it is management's opinion that the Corporation is not exposed to significant interest, currency, or credit risk arising from financial instruments. The carrying value of these financial instruments approximates their fair value.

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada

Notes to Financial Statements
March 31, 2007

Use of estimates

The preparation of financial statements in conformity with Canadian generally accepted accounting principles requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities and disclosure of contingent liabilities as at the date of the financial statements and the reported amounts of revenues and expenses during the period. Actual amounts could differ from those estimates.

Cash flows

A statement of cash flows has not been included as it would not provide any additional meaningful information.

4 Capital assets

			2007	2006
	Cost $	Accumulated amortization $	Net $	Net $
Computer equipment	30,540	24,047	6,493	11,194
Furniture and equipment	57,364	54,009	3,355	6,573
Leasehold improvement	12,732	5,517	7,215	9,761
	100,636	83,573	17,063	27,528

5 Externally restricted fund balances

Categories of externally imposed restrictions on fund balances are allocated as follows:

					2007	2006
	Litigation Fund $	Program Promotion and Access and Negotiation Fund $	Case Development Fund $	Impact Studies Fund $	Total $	Total $
Equity rights	(93,867)	(28,654)	5,357	16,963	(100,201)	52,022
Language rights	(40,091)	8,594	4,969	31,462	4,934	97,571
	(133,958)	(20,060)	10,326	48,425	(95,267)	149,593

Court Challenges Program of Canada - Programme de contestation judiciaire du Canada

Notes to Financial Statements
March 31, 2007

6 Commitments

The Corporation's Equality and Language Rights Panels have approved commitments from October 12, 1994 to September 25, 2006 as follows:

	Equality rights $	Language rights $	Total $
Litigation	15,311,832	5,452,491	20,764,323
Program Promotion and Access and Negotiation	2,621,643	637,069	3,258,712
Case Development	1,142,837	267,292	1,410,129
Impact Studies	316,433	120,672	437,105
	19,392,745	6,477,524	25,870,269
Disbursements paid	14,765,171	5,324,663	20,089,834
			5,780,435
Less: Cash of externally restricted funds			(5,945)
Commitments to be funded by future contributions			5,774,490

Commitments approved during the current fiscal year, which are included in the 2007 totals above, are as follows:

	Equality rights $	Language rights $	Total $
Litigation	259,876	212,612	472,488
Program Promotion and Access and Negotiation	6,069	37,230	43,299
Case Development	15,025	2,000	17,025
Impact Studies	(292)	(1,293)	(1,585)
	280,678	250,549	531,227

The Corporation has an operating lease commitment for office premises at an annual cost of $32,438 for a term that expires on December 31, 2009.

Court Challenges Program of Canada -

Schedule of Operating Expenses

For the year ended March 31, 2007

	2007 $	2006 $
Advertising	1,931	6,386
Amortization	11,796	11,121
Annual meeting	24,065	17,518
Audit fees	8,132	7,768
Bank charges	460	594
Facilities	31,959	36,116
Insurance	5,261	4,841
Legal fees	130	30
Office equipment and maintenance	3,846	6,731
Panel members' fees	5,625	14,625
Photocopying and printing	7,956	9,140
Postage	8,281	9,410
Public relations and outreach	33	1,213
Research material	6,856	6,919
Salaries and benefits	437,378	512,238
Supplies	5,075	5,714
Telephone and fax	10,221	11,184
Translation and interpretation	15,899	19,999
Travel and meetings	26,470	69,965
	611,374	751,512

Equality Rights Program Highlights

As in previous annual reports, we offer here summaries of some of the equality rights cases funded by the Court Challenges Program that were decided during the previous fiscal year, along with summaries of other projects that were accomplished, such as conferences held and papers written. This year's summaries carry the same characteristics as those of previous years. As usual, the ***cases*** summarized below:

- address a wide range of legal issues, from family law to immigration to Aboriginal to social and economic rights, and much more
- represent decisions from diverse levels of adjudication, ranging all the way from administrative tribunals to the Supreme Court of Canada
- include both cases that were widely publicized in the media and others that remain unreported and unknown to the general public, and
- run the gamut from devastating defeats to modest victories (for example, a hoped-for outcome based on reasons other than equality rights guarantees) to stunning triumphs that make real the rights to equality promised in our *Charter*.

The various ***projects*** also touch a wide range of topics related to s.15, how it has been applied and how it could be used in the future to further support real advancement in equality rights on behalf of people from disadvantaged groups.

These features have always characterized the work supported by the Court Challenges Program in the struggle to advance equality rights. Advances through litigation come in fits and starts and at varying levels in the process; victories may be unexpected and are not always based on the legal arguments that the Program has funded its applicants to put forward. Sometimes legal victories come about only in conjunction with parallel efforts made in relation to the issue, such as negotiation, political lobbying, or intense media attention. The results achieved from decisions made this year remained consistent with these patterns.

As readers will know by now, however, this year was also vastly different from previous years. This year our funding was abruptly cut off, and we were prevented from granting any new funds. This meant that applicants:

- waiting to have their applications considered had to be turned away;
- working to complete their applications according to requests by staff or the Panel lost their chance for funding;
- undergoing Case Development projects no longer had any hope of obtaining Case funding to proceed to litigation of their legal issue;
- with insufficient funds could no longer request Additional or Extraordinary funding to help them through their current litigation level;
- in the midst of a trial or appeal at any level other than the Supreme Court of Canada would be without resources to either pursue or defend a further appeal.

The brief notes at the end of some of these summaries highlight just a few of these troubling scenarios. These notes clearly differentiate this year's summaries, in a terrible way, from those of previous years. They describe some of the all-too-real consequences of losing the Court Challenges Program funding.

These summaries, which effectively represent a random sampling of equality rights cases and projects funded by the Court Challenges Program (i.e., those that happen to have been completed during the 2006/2007 fiscal year), demonstrate beyond a doubt the vast scope and breadth of the legal issues that arise for people from disadvantaged groups and that can be addressed through s.15 of the *Charter*. The legal issues are complex, multi-layered, and subtly nuanced, requiring sophisticated and highly specialized legal expertise for their handling. The impact of the laws and court decisions involved are significant and concrete, affecting real people's lives in important ways. The Court Challenges Program of Canada supported development and legal interpretation of these issues for the purpose of advancing equality rights – not only for those individuals most directly affected, but for the betterment of Canadian society at large.

EQUALITY RIGHTS TEST CASES

Family Law

D.B.S. v. S.R.G.

(Supreme Court of Canada – July 31, 2006)

Women's Legal Education and Action Fund ("LEAF") was funded to intervene at the Supreme Court of Canada (the "SCC") in D.B.S. v. S.R.G., a case involving retroactive child support and the entitlement of recipient spouses, predominantly mothers, to increased child support following an increase in the income of payor spouses, who are predominantly fathers.

The SCC considered the proper interpretation of s.25 of the Federal Child Support Guidelines (the "Guidelines") and s.25.1 of the Divorce Act. Prior to reaching the SCC, the case law that developed around retroactive child support had been inconsistent across the country, with some courts holding that automatic recalculation due to changes in income was not intended by Parliament when it passed the legislation.

The SCC confirmed the court's power to order a retroactive child support award, emphasizing that a payor parent 1) always has the obligation to pay child support in an amount that is commensurate to his/her income and 2) will not have fulfilled his/her obligation to his/her dependent children if (s)he does not increase child support payments when his/her income increases significantly. Failure to fulfill this latter obligation could lead to a retroactive child support award.

Unfortunately, the Supreme Court denied LEAF's application to intervene. LEAF nevertheless developed a factum (a memorandum of its arguments), which is available on its website. The factum demonstrates how a reading of the legislation disentitling claimants to retroactive child support would have had the potential to disadvantage women and children, and to leave women at an increased risk of poverty following relationship breakdowns. This substantive equality analysis considers the systemic discrimination experienced by women within the context of family law and decisions relating to support.

Many other issues related to various aspects of family law continue to require attention, and many of these could be addressed through s.15 litigation.

Immigration

Charkaoui v. Canada (Citizenship and Immigration)

(Supreme Court of Canada – February 23, 2007)

The *Immigration and Refugee Protection Act ("IRPA")* allows the Minister of Citizenship and Immigration and the Minister of Public Safety and Emergency Preparedness to issue "security certificates" declaring that foreign nationals (e.g., individuals in Canada on a visitor or student visa) or permanent residents (i.e., landed immigrants) pose a threat to Canada's security and are therefore inadmissible to Canada, leading to their detention.

Such certificates and detentions are reviewed by a Federal Court judge to determine their reasonableness. During this process, subjects and their lawyers may be deprived of some or all of the information on the basis of which such certificates were issued or detentions ordered if, in the judge's opinion, disclosing the information would be "injurious to national security." If the judge finds the certificate to be reasonable, it becomes a removal order that cannot be appealed and that may be immediately enforced.

In June 2006, the Supreme Court of Canada heard a trio of appeals brought by Muslim Arab non-citizens who challenged the constitutionality of the security certificate process. The case raised important equality issues focusing on the disparate impact of the process on Canada's Arab and Muslim communities, as well as other people of colour.

In February 2007, the Court made a unanimous decision that the *Charter* section 7 right not to be deprived of life, liberty and security of the person was engaged. The Court held that *IRPA*'s impairment of s. 7 does not meet the principles of fundamental justice and rejected the notion that national security concerns could be used to justify procedures that do not conform to fundamental justice.

The Court further determined that the s. 7 violation was not justified under s. 1 because the right was not minimally impaired. There were alternatives available to the government, such as the use of security-cleared counsel. The Court found the legislation invalid and gave Parliament one year to amend it.

The Court also found that the legislation providing for mandatory detention of foreign nationals until 120 days after confirmation of the certificate violates s. 9 of the *Charter* (the guarantee against arbitrary detention) and s.10(c) (the right to prompt review of detention).

Unfortunately, the Court did not find a s. 15 violation. It failed to deal with arguments made by various equality rights-seeking interveners that the application of the certificates is discriminatory against Muslims and Arabs through racial and religious stereotyping. The Court held that because the *Charter* allows the government to distinguish between citizens and non-citizens in relation to deportation, applying security certificate provisions only to non-citizens does not violate their equality rights.

Although this decision represents a significant success, it addresses only one aspect of the many laws designed to protect national security that may also infringe individual rights to equality on grounds of race, religion, or ethnic origin.

Guzman v. Canada (Citizenship and Immigration)

(Federal Court of Canada – September 28, 2006)

Under Canada's immigration laws, family sponsorship is the mechanism designed to facilitate family reunification in Canada for immigrants. Section 133(1)(k) of the *Immigration and Refugee Protection Regulations*, however, specifically denies would-be sponsors the right to sponsor their spouses if they are in receipt of any social assistance (other than disability assistance) between the date of the application and the date of approval.

The Inter-Cultural Association of Greater Victoria, an organization supporting immigrants and refugees, was funded by the Program to challenge this provision as discriminatory against people on social assistance and new immigrants. One of their litigants, Neila Guzman, brought the issue before the Federal Court of Canada, arguing that refusing to allow her to sponsor her husband on the grounds that she had received social assistance violates s. 15.

Ms Guzman came to Canada as a refugee from Colombia. Like many young new Canadians, she was unable to find work due to a lack of English ability and work experience, and because her spouse was not legally entitled to work in Canada.

Trial judge Mr. Justice Noël found that people in receipt of social assistance could not claim the protection of s. 15, holding that it is not a personal characteristic that constitutes an analogous ground. This ruling denies the profound historical disadvantage faced by such people and the recognition by provincial human rights codes of the receipt of social assistance as a protected ground.

The judge also held that the legislation takes into account the actual realities of immigrants on social assistance. He felt it was fair to assume that people with income from social assistance could not afford to provide for their spouses.

This assumption stereotypes people receiving social assistance as having no future ability to care for themselves or others. It also ignores the potential of the sponsored spouse to find employment and therefore get the family off of social assistance. Finally, it does not address the fact that the Regulation contains no bar to sponsorship for someone with the same income from a source other than social assistance, or for someone with no income or assets.

Finally, the trial judge felt that the ability to make an application on humanitarian and compassionate grounds lessened the negative impact of the Regulation, despite such applications being difficult, based on discretion, and burdened with long wait times.

Ms Guzman's case is currently before the Federal Court of Appeal.

Accessibility

Council of Canadians with Disabilities v. Via Rail Canada Inc.

(Supreme Court of Canada – March 23, 2007)

In December 2000, Via Rail was able to purchase 139 rail cars (known as "renaissance cars") at a "bargain price" because they had been rejected for use in the United Kingdom due to their woeful lack of accessibility. The doors of the coach and sleeper cars were too narrow to allow access to a person in a wheelchair; there was insufficient space for a wheelchair to turn around; and the bathrooms were inaccessible. Furthermore, the entry stairs and seat armrests presented obstacles for ambulatory persons with mobility impairments, and there was insufficient space to seat a person with a service animal. The cars did not come close to the standards established in the Rail Code, a voluntary code negotiated with and agreed to by Via Rail that sets minimum standards for its transportation network.

The Council of Canadians with Disabilities ("CCD"), a not-for-profit disability advocacy organization, filed a complaint with the Canadian Transportation Agency ("CTA"), which operates under the authority of, and is empowered by, the *Canada Transportation Act* (the "*Act*"). The *Act* prohibits placing "undue obstacles" on the mobility of persons with disabilities in Canada's transportation network. CCD argued that the Renaissance cars were no more accessible than Via's existing fleet of 30 year-old cars and that Via's failure to purchase cars which conformed to modern accessibility standards amounted to undue obstacles, within the meaning of the *Act*.

Via Rail acknowledged that the cars had accessibility problems, but argued that any obstacles could be overcome by the provision of other, more adequate transportation services provided elsewhere on Via's network.

The CTA released a decision very favourable to CCD, which Via Rail then successfully appealed to the Federal Court of Appeal. CCD appealed to the Supreme Court of Canada, which ruled in its favour by a 5-4 majority decision.

The Court affirmed that the applicable sections of the *Act* are similar to human rights legislation, which applies the concept of reasonable accommodation. Under this standard, service providers have a duty to do whatever is reasonably possible to accommodate persons with disabilities. Factors considered in assessing reasonable accommodation, such as cost, economic viability, safety, and the quality of service to all passengers, must be assessed based on the unique realities of the federal transportation context. The CTA considered these factors and found that Via did not meet its onus of establishing that the obstacles created by the Renaissance cars were not "undue".

The CTA was correct in considering the Rail Code. Independent access to the same comfort, dignity, safety and security as those without physical limitations is a fundamental human right for all persons who use wheelchairs. Via was not entitled to deviate from this norm because it found a better bargain for its able-bodied customers. Neither the Rail Code, the *Act*, nor any human rights principle recognizes that an opportunity to acquire inaccessible cars at a comparatively low purchase price may be a legitimate justification for sustained inaccessibility.

The Court also agreed with the CTA that, after considering Via's network, none of the evidence supported Via's position that its existing fleet, or its network generally, would address the obstacles in the Renaissance cars. The fact that there are accessible trains traveling along some routes does not justify inaccessible trains on others; the global network of rail services should be accessible. To permit Via to point to its existing cars, which were to be phased out, and special service-based accommodations as a defence would be to overlook the fact that while human rights law includes an acknowledgment that not every barrier can be eliminated, it also includes a duty to prevent new ones, or at least not knowingly to perpetuate old ones where preventable.

Finally, the Supreme Court ruled that the CTA had correctly found that retrofitting some cars in the Renaissance fleet to accommodate persons using wheelchairs would cost nowhere near the amounts

claimed by Via Rail. According to the Court, the issue is not just cost but whether the cost constitutes undue hardship, and here, the latter remained unproven.

While this decision represents a major victory on behalf of equality rights, we know from past experience that such cases usually involve considerable vigilance and almost always require follow-up legal procedures to ensure that the court order is enforced and implemented fully. Without the Court Challenges Program financing, such efforts may not be possible.

Social and Economic Rights

Taylor v. Canada (Minister of Social Development)

(Canada Pension Plan Appeals Board – August 18, 2006)

This case involved a 61-year-old woman who left work for a period of seven years to be the primary caregiver for her terminally ill step-son, and then for her chronically ill mother. During those seven years she was unable to work.

The zero income years she had been absent from the work force to care for her relatives were included in determining her average Canada Pension Plan ("CPP") contribution, which decreased her CPP benefits. Had she been caring for a child under the age of seven, she would have been able to exclude those zero income years from her pension calculation, and her monthly pension amount would not have been reduced. The Minister of Human Resources Development Canada refused Mrs. Taylor's request to exclude her caregiving years from her pension calculation. With the assistance of Court Challenges Program funding, she appealed that decision to the CPP Review Tribunal and subsequently to the Pension Appeals Board.

Before both tribunals, Mrs. Taylor argued that the CPP legislation was discriminatory under s. 15 of the *Charter* by not taking into account the already disadvantaged status of unpaid caregivers in Canadian society, the majority of whom are women, creating differential treatment between informal caregivers, and all other CPP recipients. She also argued that her s. 15 equality rights were infringed by discrimination visited upon her relatives on the basis of their disabilities and age, as well as family status.

In similar decisions, both the Review Tribunal and the Pension Appeals Board refused to recognize the alleged inequality and denied her appeal. Both tribunals relied heavily upon a finding that caregiving and child-rearing are different activities and that unlike children, not all people over the age of seven require constant care. In doing so, both failed to focus on the subgroup of caregivers, mostly women, needed to provide full-time care. Unfortunately, the legislation's disparate impact upon women, families with members who have disabilities and elderly people requiring full-time care was not recognized.

Mrs. Taylor decided not to pursue her right of appeal as the cancellation of the Court Challenges Program left her without a viable means to finance the litigation.

Cohen v. Canada (Employment Insurance Commission)

(Employment Insurance Umpire)

Neil Cohen's brother, Howard, was diagnosed with terminal soft tissue cancer in late 2003 and had months to live as the disease had progressed rapidly. On the advice of his doctor, he declined treatment and chose to die at home, in the care of his family.

Neil and Howard had always enjoyed a close and loving relationship. Mr. Cohen took time off of work to care for his brother during the last months of his life. Mr. Cohen provided physical care, attended his brother's doctor's appointments with him, and helped Howard put his financial affairs in order. Mr. Cohen also provided emotional support and comfort to Howard, his three children and his common law partner.

Under the *Employment Insurance Act* ("the *Act*"), a person who is caring for a seriously or terminally ill family member can receive up to 6 weeks of benefits to provide financial security while he or she is away from work. Mr. Cohen's application

however was denied by the Employment Insurance Commission on the basis that Howard was not a "family member". The definition of "family member" in the *Act* was restricted to an individual's spouse, parent or child.

Being excluded from the benefits program on the basis that his brother was deemed not to be a family member left Mr. Cohen with a feeling that his relationship with his brother was diminished and trivialized by the federal law.

Mr. Cohen appealed to the Board of Referees. The Board found it had no choice but to dismiss the appeal; however, it did find that the *Act* is far too narrow, excluding many loving relationships from the protection of compassionate care benefits and that Mr. Cohen was a "family member" in the truest sense of the word.

With Program funding, Mr. Cohen appealed to the Employment Insurance Umpire, challenging the definition on the basis that excluding siblings violates s. 15(1) on the grounds of "family status". He developed an argument that the *Act* restricts the right to make choices regarding the care of a loved one, limits the choices available to the dying person, unfairly portrays siblings as less willing or able to care for others and fails to recognize that the sibling bond is similar in terms of love and respect to the family relationships that are recognized by the *Act*.

Mr. Cohen withdrew his appeal before arguing his case, as the federal government changed the legislation to allow for a very broad interpretation of the term "family member" which now allows gravely or terminally ill persons to select the caregiver of their choice.

His lawyers believe that the positive changes are a result of Mr. Cohen's campaign, fought on many fronts, to have the definition of "family member" broadened to include siblings. These efforts included extensive media interviews and lobbying, all of which brought a tremendous amount of positive exposure to his s. 15 case.

Aboriginal Law

McIvor v. The Registrar, Indian and Northern Affairs Canada

(British Columbia Supreme Court – June 8, 2007)

Since its first incarnation in 1876, the federal *Indian Act* has always defined who is an "Indian" and therefore entitled to "Indian status." The federal government uses this definition to limit eligibility to Aboriginal rights and entitlements.

The 1985 *Indian Act* (often termed "Bill C-31") was an attempt by the federal government to address blatant sex discrimination existing in the older versions of the *Act*. Prior to these amendments, First Nations women lost their Indian status and Band membership as a result of their marriage to non-Indians, and could not pass on Indian status to their children. Conversely, First Nations men who married non-Indian women did not lose their Indian status and Band membership, and conferred these entitlements onto their wives and children.

Bill C-31 fixed the problem for those who had lost status through marrying non-Indian persons and provided the possibility for their children to acquire status.

However, Bill C-31 in fact perpetuates the sex discrimination in older versions of the *Act* by continuing to discriminate against descendants who trace their Indian ancestry along the maternal line. This issue is at the core of *McIvor v. Canada*, a case commenced in 1989.

Sharon McIvor is a First Nations woman who is a member of the Lower Nicola Band in British Columbia. Ms McIvor married a man without Indian status. After Bill C-31 came into force in 1985, she applied for registration and Indian status for herself and her three children, resulting in her registration but denying the same to her children. Under s. 6 of the *Act*, had Ms McIvor been able to trace her First Nations ancestry along the male line, her children would have been registered.

The Crown would subsequently concede that Ms McIvor should be registered under a different subsection of s. 6, through a different interpretation of

the various provisions, resulting in her son Jacob's registration. However, he has also married a non-Indian. As he traces his Indian status among the maternal line, he cannot pass on Indian status to his children. If Jacob could trace his Indian ancestry along the *male* line, his children could be registered.

Ms McIvor and Jacob argued that these impediments to the right to transfer Indian status result in s. 15 discrimination based on sex and marital status, and cannot be justified by the government under s. 1.

he B.C. Supreme Court emphatically agreed, finding that the registration provisions in s. 6 prefer descendents who trace their Indian ancestry along the paternal line over those who trace their Indian ancestry along the maternal line and continue to prefer male Indians who marry non-Indians and their descendents, over female Indians who marry non-Indians and their descendents.

Justice Ross noted that although the statutory concept of "Indian" is one that has been superimposed upon First Nations peoples, it has nonetheless become an important aspect of their sense of identity, cultural heritage and belonging. The right to transmit one's cultural identity to one's children is one of the most basic expectations any parent or grandparent can have. The legislation treats women as less worthy of this right. Bill C-31 perpetuates the historic disadvantage experienced by Aboriginal women and those who trace their status through the maternal line, reflecting and reinforcing a stereotype of First Nations culture and character as male, and First Nations women as property.

Those who have been denied status experience a painful loss of culture, Aboriginal identity, and exclusion from the First Nations community to which they belong. In addition, they are excluded from the tangible benefits - such as extended health benefits, financial assistance with post secondary education and extracurricular programs - that are meant to support First Nations families.

The Court ruled that s. 6 of the *Act* is of no force and effect insofar as it authorizes the differential treatment of First Nations men and First Nations women, and matrilineal and patrilineal descendants, in the conferring of Indian status.

The government has appealed this decision. Given the cancellation of the Program, Ms McIvor and Jacob have no means to finance their defense.

Access to Justice

Little Sisters Book and Art Emporium v. Canada (Commissioner of Customs and Revenue)

(Supreme Court of Canada – January 19, 2007)

This case was part of extended litigation between Little Sisters Book and Art Emporium ("LS") – a gay and lesbian bookstore located in Vancouver – and federal Customs officials that began in the early 1990's. The book store won its initial challenge when the Supreme Court of Canada ruled in 2000 that Customs officials were applying the legislation regarding seizures of imported materials in a discriminatory fashion (based on sexual orientation), contrary to s. 15. In the wake of further seizures, however, LS commenced another appeal. This time the book store sought a systemic review of Customs' discriminatory practices to prevent further seizures.

LS applied to have Customs pay in advance for this case. The trial judge ordered the government to do so after the estimated trial time doubled as a result of evidence divulged in the discovery process which suggested that the systemic problems revealed in the earlier case had never been resolved. While some awards of advance costs have been made in Aboriginal litigation, LS was apparently the first non-Aboriginal matter in which such an order was granted.

The advance costs order was reversed on appeal and became the central issue before the Supreme Court, namely: When should courts order a defendant to pay a plaintiff's costs in advance, regardless of the result of the litigation?

LS was the first case on advance costs to be heard by the Supreme Court since the December 2004 decision in *British Columbia (Minister of Forests) v. Okanagan Indian Band*, [2003] 3 S.C.R. 371. In that case, the court ordered the government to fund

the case of Aboriginal bands that were in complex litigation against the government that they could not pay for.

Unfortunately, the Supreme Court upheld the BC Court of Appeal's decision that the present case did not meet the requirements for an advance costs award as set out in *Okanagan*.

The majority of the Court found that this appeal was limited in scope and not exceptional as required for an advance costs award. There was no evidence that the four books at issue were integral to the store's operations. The Court felt there was no *prima facie* meritorious claim, claiming there was no evidence they were the victims of unfair targeting. It also disagreed with LS that the issues raised transcended individual interests, as they were limited to a specific set of facts.

Binnie and Fish JJ. in dissent pointed out that 70 percent of Custom's seizures were of gay and lesbian material. They felt that LS had raised special issues of public importance that transcended individual interests – namely, whether the government respects the law and operates in relation to its citizens in a non-discriminatory fashion.

Given the importance of this case to the ability of disadvantaged groups to gain access to the justice system, the Program funded ARCH Disability Law Centre and the Council of Canadians with Disabilities ("CCD") to seek leave to intervene in this appeal.

The CCD and ARCH sought to argue that since public funding for equality rights litigation is discretionary and subject to shifting political agendas, it is critical that the possibility of funding through court-imposed cost awards be expanded to include cases brought by individuals and public interest organizations.

This decision represents a serious blow to equality-rights seekers, particularly in conjunction with the cancellation of the Court Challenges Program. With this decision, the possibility of public interest litigants obtaining help to pay for their court cases has become extremely unlikely.

PROGRAM PROMOTION AND ACCESS PROJECTS

The Equality Rights Program also provided financial assistance for Program promotion and access projects, negotiations and impact studies. These projects assisted equality-seeking groups and communities in developing their capacity to seek redress for equality rights violations that come within the Program's test case mandate. The following is a summary of some of these initiatives that were reported to the Program in the last year.

Consultations and Conferences

Council of Canadians with Disabilities – *20th Anniversary of Section 15*

This was a national consultation among equality seekers to reflect on twenty yeas of constitutional equality rights and to strategize about methods for revitalizing substantive equality and place it back on the agenda in Canada, using the 20th anniversary of s. 15 as a launching point.

Impact Studies, Discussion Papers and Outreach Materials

Women's Legal Education and Action Fund ("LEAF") – *Discrimination in the Human Rights Context: Why the Law Approach Should Not Be Imported*

LEAF prepared a discussion paper to accompany a national consultation regarding importation of the s. 15 "injury to dignity" or "*Law*" test into the statutory human rights context. The paper contends that the Law test, established in the Supreme Court of Canada decision in *Law v. Canada* [1999] 1 S.C.R. 497, and its largely formalistic interpretation by the courts, have undermined a substantive equality approach to the *Charter*'s s. 15. According to the paper, the traditional *prima facie* approach used in human rights claims, which focuses on the effects of discriminatory conduct and differential treatment, is a far superior tool for achieving social justice than the *Law* test for discrimination. It would be a step backward, then, for the *Law* test to continue to be used in deciding statutory human rights claims.

Women's Legal Education and Action Fund ("LEAF") – *Gosselin v. Quebec*

LEAF was granted funding to prepare an impact study of *Gosselin v. Quebec*, an important Supreme Court of Canada case concerning the constitutionality of a social assistance regulation that denied full benefits to persons under the age of 30, leaving them with a grossly inadequate amount of money to subsist upon.

The case raised important issues about the nature and extent of a *Charter*-based right, whether under s. 15 or s. 7, to financial assistance that meets basic needs.

The impact study analyzed the decision from a poverty law perspective, with a particular focus on the broader impact on women's social and economic equality.

Court Challenges Program of Canada – *Equality Rights and Environmental Rights*

This discussion paper was commissioned by the Program for use in its 2006 National Consultation, which was ultimately not held due to the Program's cancellation. It examines what s. 15 equality rights may have to offer in the field of environmental law, and looks specifically at the disparate impact environmental degradation has on the historically disadvantaged groups protected by s. 15, such as the poor, people with disabilities, Aboriginal persons and other people of colour.

While highlighting certain pivotal issues such as the ability to establish *Charter* applicability and to demonstrate the harm involved, the paper argues that s. 15 can be a viable tool in these circumstances.

Council of Canadians with Disabilities – *Litigating Section 15: The Path to Substantive Equality in Charter Adjudication*

This paper explores the causes and consequences of unequal access to s. 15 litigation and possible mechanisms to overcome these barriers.

After describing the nature of s.15 litigation, the types of barriers to full and inclusive access to justice, and the harmful effects of these barriers, the paper outlines four measures that could increase equal access to justice: changes related to institutional conditions and legal culture; increased legal aid; extension of the mandate and funding of the Court Challenges Program; and, costs awards. The final section reviews strategies for achieving these objectives.

Council of Canadians with Disabilities – *Equality Rights: A Synopsis of Section 15(1) Trends*

These outreach materials survey major s. 15 test cases and analyze the extent to which they have fulfilled equality-seekers' expectations over the past 20 years. The materials conclude that despite the Court's initial promise to promote a vision of substantive equality that is directly informed by social context, formal equality considerations pervade the Court's approach.

To reverse this trend, the paper advocates drawing attention to the dual purpose and goal of s. 15: to prevent violation of essential human dignity and freedom through the imposition of disadvantage, stereotyping, or political or social prejudice, and to promote a society in which all persons enjoy equal recognition before the law, and are equally capable and deserving of concern, respect and consideration.

Council of Canadians with Disabilities – *Promises to Keep – Section 15 and the Long Road to Equality*

These outreach materials are a plain-language tool that will help people understand the modern day struggle for substantive equality. They describe the fight for *Charter* language that would offer more expansive protections for historically disadvantaged groups than the initial government proposals, and then discuss the meaning of substantive equality and the many challenges to achieving it.

National Anti-Racism Council of Canada – *Sexual Orientation, Race and Section 15 of the Charter of Rights and Freedoms*

This paper explores the advancement of racial equality as it intersects with sexual orientation in s. 15 claims. The author explains the problems inherent in the categorical approach to human rights, which ignores the distinct disadvantage faced by people on the basis of multiple grounds of discrimination (e.g. lesbian women of colour), and argues that s. 15 *Charter* jurisprudence suffers from an inadequate understanding of such intersectional claims, insensitivity to race-based and systemic claims, and problems inherent in the *Law* test. The author concludes by suggesting strategies for advancing intersectional equality rights claims.

National Anti-Racism Council of Canada – *Disability, Race and Section 15 of the Charter of Rights and Freedoms*

This paper examines the intersectionality of race and disability in the context of s.15 jurisprudence. The paper begins with an analysis of the general legal context as it relates to disabled ethnocultural communities. An historical analysis of the concept of equality follows, taking into account the manner in which courts have dealt with this concept, particularly as it relates to disability and race. Shared equality issues faced by racialized and disabled communities are discussed. The paper concludes by suggesting legal strategies which disabled ethnocultural communities can utilize to overcome discrimination.

Language Rights Program Highlights

On September 26, 2006, the Conservative Government abolished the Court Challenges Program. The Program's language component aimed to clarify constitutional rights and freedoms through funding test cases of national significance related to official languages.

This annual report highlights the Program's accomplishments, as well the impact of its closing down. Many have emphasized the immediate link between the Program and significant legal determinations related to language rights. But what exactly has transpired from these major decisions for the development of official language minority communities?

Financial assistance granted by the Program to applying parties allowed the courts to define the following legal principles, among others:

- Language rights must in all cases be interpreted purposively, in a manner consistent with the preservation and development of official language communities in Canada.[1]
- Educational rights in s. 23 of the *Charter* include the right to management and control.[2]
- Management includes the right to distinct physical settings.[3]
- The right of management granted to the minority includes the right to determine the location of schools.[4]
- The unwritten constitutional principle related to the respect for and protection of minorities may give rise to "substantive" obligations because of its powerful normative force.[5]
- Any remedy must be appropriate and just and comply with the purpose of the right in question.[6] Thus, courts may impose practical solutions so as to ensure that language rights are implemented.

Application of judicial principles

Since 1982, the right to education in the language of the minority has been applied throughout the country. In fact, s. 23 of the *Charter* is the first provision to recognize linguistic obligations imposed on the federal and all provincial and territorial governments. Owing to court decisions pertaining to s. 23, we know that provincial and territorial governments must legislate to set up a school system that complies with the rights of linguistic minorities. In 1982, French-language schools only existed in half of Canadian provinces. Today, French-language schools are established in all provinces and territories and a network of school administrative services designed for Francophone communities has been set up across the country. In addition, courts have recognized the close connection between language, culture and education within official language minority communities.

Progress has also taken place regarding the courts' approach in interpreting language rights. It all began in 1986, with the Supreme Court of Canada's decision in *Société des Acadiens du Nouveau-Brunswick*[7], which supported a restrictive approach based on political compromise. In 1999, the Supreme Court of Canada's decision in *Beaulac* brought about important changes in the interpretation of language rights, on both the legislative and constitutional levels, therefore inspiring a decisive turning point in the evolution of jurisprudence. Judicial deference based on the principle of political compromise was readily

1 *R. v. Beaulac*, [1999] 1 S.C.R. 768

2 *Mahé v. Alberta*, [1990] 1 S.C.R. 342

3 *Reference re. Public Schools Act (Man.)*, [1993] 1 S.C.R. 839

4 *Arsenault-Cameron v. Prince Edward Island*, [2000] 1 S.C.R. 3

5 *Lalonde v. Ontario (Commission de restructuration des services de santé)* (2001), 56 R.J.O. (3e) 577 (C.A.)

6 *Doucet-Boudreau v. Nova Scotia (Minister of Education)*, [2003] 3 S.C.R. 3

7 *Société des Acadiens du Nouveau-Brunswick v. Minority Language School No. 50*, [1986] 1 S.C.R. 549

rejected and replaced by a purposive interpretation of language rights, consistent with the preservation and development of official language minorities in Canada.

Over time, courts have made decisions about numerous legal principles, among which the unwritten principle related to the protection of minorities, substantive equality within the context of language rights, institutional bilingualism in the judicial field, the definition of an institution, proactive offer and delivery of services, significant demand and the nature of the office that provides services. In many instances, language rights, and consequently, the rights of official language minorities across the country, have evolved because of a number of judicial decisions that breathe life into these principles. These decisions bear out the role that courts can and should play in ensuring that language rights are complied with.

Consequences of the Program's cancellation

The decision to cancel the Program's funding may have significant, if not irreparable effects on many files. Financial assistance granted by the Program to applicants only involves a very distinct step within the judicial process, whether it is case development with a view to better cover all aspects of the issue at hand, negotiations in order to settle a dispute, a court proceeding or an appeal. While funding throws the process into gear, the outcome remains uncertain. For example, a successful applicant has to wait and see whether the prosecuting attorney launches an appeal. If the decision is appealed, the plaintiff will be unable to ask for the Program's financial assistance as required to pursue the issue. In other cases, where the Crown was successful before the courts, the plaintiff, without the Program's funding, will have to accept that the decision will come into force after the delay for appeals has expired. Henceforth, plaintiff parties are caught in a cycle from which they cannot escape.

Files for which the process is in doubt

The Program's termination leaves in its wake a number of outstanding files. In 2005, in *Rémillard*[8], the Provincial Court of Manitoba rendered a decision on language obligations placed upon the City of Winnipeg Police Services when offence violations to the *Highway Traffic Act* were issued to residents of the designated area of Riel. The Court concluded that the City had not taken all reasonable measures to comply with its obligations. The plaintiffs were successful at trial. The Crown decided to appeal the decision. Before the Court of Appeal, the respondents asked that proceedings be held in French and that judges understand presentations without the help of an interpreter. The motion was denied. The respondents asked for and obtained financial assistance at the appeal level on the basis of the right to bilingualism before Manitoba courts. In this file, the respondents are challenging the principle by which a person has the right to choose the language of proceedings within the judicial field. The case involves institutional language rights and raises the issue of the substantive equality of official languages. As a result of funding being secured at the appeal level only, this file's progress is in doubt following the Program's termination.

In 2006, the Supreme Court of the Northwest Territories released a decision on the nature and scope of linguistic obligations imposed on the government of the Northwest Territories ("NWT"), as well as the federal government in the NWT. The plaintiffs were concerned about the lack of French-language services and highlighted that it was a systemic problem. On the basis of substantive equality, the Court concluded that territorial governments are bound to "obligations of results" in linguistic matters and that they must reach expected results, notwithstanding "challenges of governance" that they face.[9] The plaintiffs were successful at trial. Crown counsel appealed the decision. The applicants asked for and obtained financial assistance

8 *R. v. Rémillard* (June 15, 2005, Manitoba Provincial Court, J. Joyal)

9 *Fédération franco-ténoise v. Canada (Attorney General)* 2006 NWTSC 20

for an appeal that will be heard shortly. Whatever the outcome of this proceeding, the termination of the Program jeopardizes this very complex case, which has been ongoing for a number of years.

In Saskatchewan, the Conseil des écoles fransaskoises was granted funds in two files: the lack of financial resources for minority schools and the existence of inadequate physical settings for one French-language school. Both files support the right to quality education as set out in s. 23 of the *Charter*. There is no doubt that the right of minority groups to benefit from instruction in their own language is of crucial importance. Furthermore, the future of official language minority communities depends on education services provided to their youth. However, lack of financial resources might result in both these cases being discarded.

These four cases, chosen among numerous files, highlight some of the difficulties regarding access to justice in the context of a judicial challenge involving language rights.

The next section of the annual report deals with the main cases granted funding by the Language Rights Panel during the 2006/2007 fiscal year. This exercise is incomplete due to the termination of the Program in 2006. Major court decisions that had an impact on language rights are also presented.

The first part provides an overview of language rights test cases having received financial assistance. These cases touched on:

- Minority Language Education Rights;
- Language of Work, Communication and Service Delivery;
- Linguistic Rights and Freedom of Expression;
- Judicial Rights;
- Legislative Bilingualism; and
- The Unwritten Constitutional Principle Related to the Protection of Minorities.

Following the description of cases, projects and impact studies funded by the Program are summarized.

LANGUAGE RIGHTS TEST CASES

Minority Language Education Rights

Section 23 of the *Charter* is the first constitutional provision to impose linguistic obligations on all provincial and territorial governments. Thus, governments must legislate so as to put in place a school system that complies with the rights of official language minorities. Hence, s. 23 guarantees members of minority groups the right to receive instruction in their own language, where numbers warrant.

There are three categories of right holders. Firstly, parents whose mother tongue, first language learned and still understood, is that of the province's linguistic minority are granted this right under para. 23(1)(a) of the *Charter*. In fact, this provision involves Francophones living outside Quebec and Anglophone Quebecers. Secondly, para. 23(1)(b) of the *Charter* bestows this right to parents who have been educated in the official language of a province's minority. This category could be seen as an exception to the notion of mother tongue as it focuses on parents' school records. Thirdly, under s. 23(2), parents of whom one child has been educated in the official language of the minority may have all their children educated in this language.

In Quebec, access to English-speaking schools is still a controversial issue. In its recent majority decision[10], the Court of Appeal of Québec ruled that the second to last paragraph of section 73 of the *Charter of the French Language* was unconstitutional. The provision precluded students who had attended an unsubsidised private English-speaking school for one year to transfer to a public English-speaking school. According to the Court, this provision was incompatible with s. 23(2) of the *Canadian Charter of Rights and Freedoms*. However, after a petition submitted by Quebec's Attorney General and Minister of Education, the judgment's enforcement was suspended in order to

10 *H.N. v. Quebec (Minister of Education)*, Court of Appeal of Québec, August 22, 2007

avoid "judicial and administrative chaos" during the back-to-school period. Therefore, we must await an upcoming decision by the Supreme Court of Canada before we see this issue resolved.

During the course of the year, the Program has granted funding to a number of cases related to issues of interest to official language minorities. Following is an overview of these cases.

Right to an Education of Equal Quality

Section 23 bestows the right to quality education, which includes the quality of programs, facilities and educational material, as well as that of the skills and expertise demonstrated by teachers and other school professionals. In *Mahé*, the Supreme Court stated that "the quality of education provided to the minority language group should in principle be on a basis of reasonable equality with the majority".

Despite this statement, official language minorities do not always manage to access educational facilities and programs that are equivalent to those offered to the linguistic majority.

The Program's last annual report referred to funding granted to the Conseil scolaire Centre-Est de l'Alberta, located northeast of Edmonton. The case involved a challenge to the Alberta government's refusal to finance the Conseil scolaire in order to allow for the construction of school facilities in St.Paul and Bonnyville. According to the Conseil scolaire, very few right holders had enrolled their children in these communities' French-speaking schools because the facilities were of inferior quality to those provided to the majority. Since the submission of a motion for judicial review, the parties have come to an extrajudicial settlement and the file is closed.

The Language Rights Panel granted funding to the Conseil scolaire du Sud de l'Alberta for negotiations. This file involves the lack of adequate facilities in Okotoks. In this instance, the *Alberta Municipal Act* provides that it is up to municipalities to supply land on which a new school could be located. Thus, this file raises the issue of constitutional obligations imposed on municipalities, under s. 23 of the *Charter*.

A recent judgment by the Supreme Court of Nova Scotia examined the obligations placed upon the province toward parent right holders whose children have special needs.[11] Under s. 23 of the *Charter*, these parents have the right to services that are equivalent to those offered to Anglophone parents.

The Language Rights Panel also granted funding to a group of parents from the Halifax-Bedford-Sackville area in Nova Scotia. These parents are asking for the establishment of a high school, in compliance with s. 23 of the *Charter*. Parents claim that French-speaking schools do not meet the needs of the Francophone community in view of the distance they have to travel and the lack of space in existing facilities. Consequently, many minority language parents enrol their children in English-speaking schools.

Language of Work, Communication and Service Delivery

Section 16.1 of the *Charter* stipulates that French and English are the official languages of Canada and have equality of status, and equal rights and privileges as to their use in all institutions of the Parliament and the government of Canada. Paragraph 16(2) has similar provisions regarding the institutions, legislature and government of New Brunswick, while paragraph 16(3) confirms the authority of Parliament and the legislatures to advance the equality of status or use of English and French.

Section 16.1 of the *Charter* is unique in that it enshrines the equality of both of New Brunswick's official language communities in the *Constitution*.

On the other hand, s. 20 of the *Charter* confers the individual right to use one's language of choice to communicate with, or to receive services from, any head or central office of an institution of Parliament or of the government of Canada and the legislature or government of New Brunswick.

11 *Dauphinée v. Conseil scolaire acadien provincial*, 2007 NSSC 238m

Except for head or central offices, the aforementioned right to receive services in the official language of one's choice is subject to discretion based on whether there is a significant demand or on the nature of a given office.

Evidently, bilingualism is imposed on government institutions and not on civil servants. Government institutions have to hire a sufficient number of bilingual personnel to meet the public's needs. It illustrates the notion of institutional bilingualism.

The right to receive provincial and territorial services in French exists in Prince Edward Island, Nova Scotia, Ontario, Manitoba, Saskatchewan, the Northwest Territories, Nunavut and in the Yukon. In these cases, these rights flow from a statute or government policy.

Linguistic Obligations of the RCMP

The Language Rights Panel granted funding to the Société des Acadiens et Acadiennes du Nouveau-Brunswick ("SAANB") for an appeal to the Supreme Court of Canada in *SAANB v. RCMP* and *Paulin v. Her Majesty the Queen*. These cases involve the linguistic obligations of the Royal Canadian Mounted Police ("RCMP") when it provides services in a province, namely in New Brunswick.

Ms. Paulin had been arrested by an RCMP officer for speeding in an area of New Brunswick where there is a small Francophone population. Even though the ticket was written in French, the officer was not able to provide services in this language.

The applicants were successful at trial. The decision was appealed before the Federal Court of Appeal.[12]

Despite the fact that this case relates specifically to New Brunswick, it is noteworthy that the RCMP provides provincial policing services in eight provinces and approximately two hundred municipalities.

In these instances, according to the Court of Appeal "The RCMP must therefore continue to fulfill the language obligations that the *Charter* imposes on federal institutions, even when it is acting as a police force for a province that is not subject to constitutional official language obligations" (para. 36).

As for New Brunswick, the Court of Appeal stated that under an agreement with the RCMP, it was up to the province to decide the extent of services to be provided, and to set the objectives and priorities of the provincial police service. Thus, the Court concluded that the province, as principal, remained responsible for acts of the RCMP, its agent. Obligations related to official languages are imposed on "institutions" of the legislative assembly of New Brunswick and on its government. The RCMP has a contractual responsibility, that of complying with the agreement it entered into with the province.

Further, the Court stated that in this instance, the agreement between the RCMP and the government of New Brunswick overlooked the language issue.

In concluding, the Court of Appeal reiterated that "According to the terms of the contract, it is the responsibility of the province responsible for the task to establish the level of service in both official languages required from the RCMP, beyond the language obligations that the RCMP must already observe as a federal institution" (para. 25).

In November 2006, the Supreme Court of Canada granted the application for leave to appeal.

Linguistic Obligations of the Territories

For a number of years, the nature and scope of linguistic obligations imposed on the three Territories have been rather unclear.

In 2006, the Supreme Court of the Northwest Territories ("NWT") released a decision in which it set out its opinion with regard to the nature and scope of linguistic obligations of the Northwest Territories, as well as those of the federal government in the NWT.

Criticizing the lack of services to Francophones, the applicants who had received funding from the Program, called attention to the systemic problems

12 [2007] 1 F.C.A. 177

raised by the incomplete and random application of linguistic obligations within the NWT.

From the start, the Court rejected the submission brought forward by the Territorial respondents who argued that the general and global nature of the applicants' arguments were not triable. Furthermore, the Court concluded that it was not necessary to decide on the issue of whether ss. 16 and 20 of the *Canadian Charter of Rights and Freedoms* applied to the NWT, since the *OLA* of the NWT in and of itself allowed for this issue to be resolved.

After reviewing the historical context of language rights in the NWT, the Court found that the NWT's *OLA* was adopted to clarify the status of official bilingualism within the NWT and to give effect to the federal commitment to promote language rights across the country.

The Court also concluded that, because of its quasi-constitutional nature, the *OLA* had to be interpreted such as to promote the unwritten principles of the Constitution, among which federalism and the protection of minorities, as well as its remedial purpose and the newly applied interpretative approach put forward by the Supreme Court of Canada in *Beaulac*.

Pursuant to the judgment in *Beaulac*, J. Moreau noted that substantive equality is the norm that should be applied to language rights. Thus, Territorial governments are bound to "obligations of results" and must reach these expected results, notwithstanding the "challenges of governance" that they face. The judge, however, did recognize that governments enjoy some flexibility regarding the preferred means of meeting these obligations.

After examining each allegation of infringement related to active offer of services in French and to services offered in French in government offices, the judge rejected the Territorial defendant's arguments to the effect that those infringements were isolated and inconsequential incidents. In fact, she concluded that the problem was serious and widespread in the NWT and she ordered affirmative and concrete remedial measures.

The Crown decided to appeal this decision, which largely favoured the plaintiffs, before the Court of Appeal of the Northwest Territories. The Language Rights Panel granted funding to the Fédération franco-ténoise, so the group could pursue its challenge.

Language Rights and Freedom of Expression

Some of the basic rights set out in the *Canadian Charter of Rights and Freedoms* include a linguistic component. The most obvious example of this type of right is freedom of expression guaranteed under paragraph 2(b) of the *Charter*. The Supreme Court of Canada has already ruled on the link between language and freedom of expression in cases raised in Québec, especially regarding language in commercial signs.

The Program's Contribution Agreement with the federal government allows for the Language Rights Panel to grant funding to cases dealing with freedom of expression, provided that these cases are directly tied to the language rights of an official language minority.

During the 2006/2007 fiscal year, the Program received no applications for funding regarding the language components of freedom of expression.

Judicial Rights

In judicial matters, language rights guaranteeing bilingualism pertain to the language in which proceedings are held and to the right to address a tribunal in the official language of one's choice. In this regard, language rights arise from section 133 of the *Constitution Act, 1867*, section 23 of the *Manitoba Act, 1870* and section 19 of the *Charter*. These provisions allow French and English to be used in any trial by courts established by the Parliament of Canada and by some provinces, namely Québec, New Brunswick and Manitoba.

During the past fiscal year, the Program granted financial assistance in two files.

In 2005, in *Rémillard*, the Provincial Court of Manitoba held that the City of Winnipeg had not complied with its linguistic obligations. This decision was appealed to the Court of Appeal. The

respondents asked that proceedings be held in French and that judges be able to understand arguments without an interpreter. Despite s. 23 of the *Manitoba Act, 1870*, the request was denied. The Language Rights Panel granted funds to the respondents at the appeal level on the issue of the right to bilingualism before the courts of Manitoba. This case pertains to institutional language rights and it raises the principle of the substantive equality of official languages.

The second file relates to the right to a French-language trial in the Yukon. The Language Rights Panel granted financial assistance to Mr. Halotier which allowed him to appeal a decision before the Yukon Court of Appeal. This case relates not only to the scope of language rights as set out in sections 4, 5 and 6 of the [Yukon] *Language Act*, but also to the application of sections 16 and 20 of the *Canadian Charter of Rights and Freedoms* within the Yukon.

Legislative Bilingualism

The Program may contribute financially to cases seeking clarification of linguistic obligations regarding legislative matters imposed on the Parliament of Canada, the legislatures of New Brunswick and Manitoba and the Québec National Assembly.

These rights contain three components. The first one relates to parliamentary bilingualism, which grants anyone the right to use French or English in debates and other proceedings; this right extends to the entirety of parliamentary activities. The second component requires that all documents emanating from these two institutions be printed and published in both official languages. Thirdly, statutes must be adopted and given assent in both official languages, with each version being equally authoritative.

During the 2006/2007 fiscal year, the Program received no applications for funding with regard to legislative bilingualism.

The Unwritten Constitutional Principle Related to the Protection of Minorities

The unwritten and underlying principle related to the protection of minorities stated in *Reference re. Secession of Quebec*[13], and further clarified by the Ontario Court of Appeal in *Montfort*[14], still contributes to the advancement of language rights. It is important to note that the Ontario Court of Appeal had indicated that even in the absence of a violation of a written constitutional guarantee, "Unwritten constitutional norms may, in certain circumstances, provide a basis for judicial review of discretionary decisions". One such decision was made by the Health Services Restructuring Commission when it directed Montfort Hospital to reduce its health services. This constitutional principle comes into force when "circumstances involve serious implications for the minority in question".

The same principle has arisen from a case in Alberta. The Language Rights Panel granted funding to Mr. Caron in order for him to challenge the constitutional validity of the *Alberta Languages Act* 1988 (the "*Act*"). Following the 1988 Supreme Court of Canada's decision in *Mercure*[15], the Alberta government adopted the Act which retroactively validated the English-only statutes, regulations and ordinances, and stipulated that from now on, acts and regulations may be adopted in English only and that one has the right to oral communications in English or French before some provincial courts only.

Mr. Caron asked that the Court re-examine the constitutionality of the government of Alberta's repeal of its linguistic obligations set out in s. 110 of the *North-West Territories Act*. Considering the evolution of case law since the *Mercure* decision, the claimant argued that Alberta could not unilaterally eliminate its linguistic obligations in the future, nor could it validate unilingual legislation while disregarding its constitutional obligations. In light of

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13 [1998] 2 S.C.R. 217

14 *Lalonde v. Ontario (Commission de restructuration des services de santé)* (2001), 56 R.J.O. (3e) 577 (C.A.)

15 [1988]1 S.C.R. 234

this clear setback for language rights in Alberta, Mr. Caron drew on the unwritten constitutional principle related to the protection of minorities and on para. 16(3) of the *Charter*.

PROGRAM PROMOTION AND ACCESS PROJECTS

The language component of the Program also grants funding to projects regarding Program promotion and access and impact studies. During the past year, a few initiatives were funded.

Impact Study

The Language Rights Panel granted funding to the Commission nationale des parents francophones for an impact study regarding the application of Part VII of the *Official Languages Act* ("*OLA*"), in light of language provisions set out in the *Canadian Charter of Rights and Freedoms*. This research examines the legislative modifications recently made to Part VII of the *OLA* and the consequences of these changes in matters related to early childhood development.

Project – Program Promotion and Access

The Commission nationale des parents francophones received financial assistance to hold a national consultation, in partnership with three national organizations (the Fédération des associations de juristes d'expression française de common law, the Fédération des communautés francophones et acadienne and the Fédération nationale des conseils scolaires francophones). Representatives of the Office of the Commissioner of Official Languages were also present. The consultation served as a forum to discuss the impact study on the effects of legislative changes on federal obligations as they relate to early childhood development. Participants were looking to identify legal strategic measures to deal with this situation.

CONCLUSION

Language rights have evolved quickly and changes that have occurred largely support minority groups. The language component of the Court Challenges Program was established to clarify the scope of language rights in Canada. The Program is proud of its role in supporting minority groups who seek full respect of their rights. The development of official language minority communities across the country is vital to the future of Canada's linguistic duality. Cancellation of the Program's funding jeopardizes the future of these communities and raises growing concern about the role courts can and must play in ensuring compliance with language rights in Canada. At the moment, there lingers great uncertainty about some of the language rights issues that remain unresolved. Indeed, more inequalities may arise or be perpetuated, while affected people are denied the opportunity to access justice and bring it into play.

Appendixes

Statistical Highlights

EQUALITY RIGHTS PROGRAM

Breakdown of funding applications granted in 2006-2007

The Court Challenges Program received a total of 45 applications for equality-related cases and projects during this fiscal year. In 2006/2007, the Panel granted funding for 14 applications in the following categories:

Equality Rights	% of Total	Number of Cases	Amount Granted
Case Development	5.3	1	$15,025
Case Funding	92.6	8	$259,876
Impact Studies	0	0	$(292)
Program, Promotion & Access and Negotiation	2.1	5	$6,069
Total	100	14	$280,678

(**Note**: The figures noted above represent the total amount of funds granted in this fiscal year including funds granted to applications received in previous fiscal years but dealt with in this fiscal year. The total amount granted in each category also includes funds withdrawn from files of previous fiscal years where a portion of the funds granted were not used.)

Table 1 – Breakdown of Equality Applications Received October 24, 1994 – September 25, 2006

Province/ Territory	Yukon	Nunavut [1]	Northwest Territories	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Québec	New Brunswick	Nova Scotia	Prince Edward Island	Newfoundland Labrador	Other [2]	Total
% of Applications	0.1	0.0	0.3	12.2	7.4	3.1	14.6	42.1	12.3	1.6	4.2	0.6	1.1	0.4	100%
Total	2	0	4	177	108	45	212	613	179	23	61	9	16	6	**1455**
% of Applications	0.0	0.0	0.0	13.4	6.6	2.2	6.6	55.7	8.8	4.4	0.0	0.0	2.2	0.0	100%
2006/07	0	0	0	6	3	1	3	25	4	2	0	0	1	0	**45**
% of Applications	0.0	0.0	0.0	6.3	3.6	1.8	12.6	63.1	7.2	1.8	1.8	0.0	0.9	0.9	100%
2005/06	0	0	0	7	4	2	14	70	8	2	2	0	1	1	**111**
% of Applications	0.0	0.0	0.0	15.0	5.0	0.0	19.0	45.0	12.0	1.0	0.0	0.0	1.0	2.0	100%
2004/05	0	0	0	15	5	0	19	45	12	1	0	0	1	2	**100**
% of Applications	0.0	0.0	0.9	9.9	3.6	1.8	10.8	45.9	20.7	0.0	3.6	0.9	1.8	0.0	100%
2003/04	0	0	1	11	4	2	12	51	23	0	4	1	2	0	**111**
% of Applications	0.0	0.0	0.0	10.0	4.7	3.3	18.0	41.3	14.0	0.7	6.7	0.7	0.7	0.0	100%
2002/03	0	0	0	15	7	5	27	62	21	1	10	1	1	0	**150**
% of Applications	0.0	0.0	0.7	14.1	11.1	2.2	10.4	36.3	16.3	3.0	5.9	0.0	0.0	0.0	100%
2001/02	0.0	0.0	1.0	19.0	15.0	3.0	14.0	49.0	22.0	4.0	8.0	0.0	0.0	0.0	**135**
% of Applications	0.7	0.0	0.0	6.0	8.1	2.7	10.7	42.3	18.1	2.0	4.7	1.3	2.7	0.7	100%
2000/01	1	0	0	9	12	4	16	63	27	3	7	2	4	1	**149**
% of Applications	0.0	0.0	0.0	11.4	11.4	2.3	18.9	39.4	7.5	0.0	8.3	0.0	0.8	0.0	100%
1999/00	0	0	0	15	15	3	25	52	10	0	11	0	1	0	**132**
% of Applications	0.0	0.0	0.0	13.6	8.0	0.8	19.2	39.2	12.8	0.0	5.6	0.0	0.8	0.0	100%
1998/99	0	0	0	17	10	1	24	49	16	0	7	0	1	0	**125**
% of Applications	0.7	0.0	0.0	11.5	9.4	7.1	18.0	38.8	9.4	0.7	2.9	0.0	1.5	0.0	100%
1997/98	1	0	0	16	13	10	25	54	13	1	4	0	2	0	**139**
% of Applications	0.0	0.0	0.0	15.0	7.1	2.6	9.7	39.8	13.2	5.3	3.5	1.0	1.8	1.0	100%
1996/97	0	0	0	17	8	3	11	45	15	6	4	1	2	1	**113**
% of Applications	0.0	0.0	2.3	15.9	8.0	10.2	17.0	33.0	5.7	0.0	3.4	4.5	0.0	0.0	100%
1995/96	0	0	2	14	7	9	15	29	5	0	3	4	0	0	**88**
% of Applications	0.0	0.0	0.0	28.1	8.8	3.5	12.3	33.3	5.2	5.2	1.8	0.0	0.0	1.8	100%
1994/95	0	0	0	16	5	2	7	19	3	3	1	0	0	1	**57**
% Canada's Pop.	0.1	0.1	0.1	12.9	9.3	3.4	3.8	37.6	24.7	2.5	3.1	0.5	1.9	–	100%

1 Nunavut became a Territory in April 1999.

2 Any location outside of Canada.

Table 2 – Breakdown of Equality Applications Received [1]
October 24, 1994 – September 25, 2006

	94/95	95/96	96/97	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	Total
Aboriginal	9	19	21	32	15	39	29	26	29	20	10	17	6	272
Age	2	0	5	5	3	5	7	3	2	2	6	4	0	44
Citizenship	2	2	1	4	4	2	5	0	4	3	4	7	2	40
Colour/Race/Ethnicity/Nationality														
Colour	0	7	6	4	0	0	0	0	0	0	0	0	0	17
Race	0	0	2	9	17	16	24	23	12	10	13	15	9	150
National Origin	2	1	3	2	1	0	0	2	0	0	2	1	0	14
Ethnicity	2	1	6	4	9	2	7	3	9	0	1	1	0	45
General [2]	2	5	9	3	3	0	0	0	0	0	2	3	0	27
Disability	7	12	10	19	17	13	17	16	24	13	18	17	12	195
Family/Marital/Parental	3	6	6	4	6	5	7	3	8	3	5	1	0	57
Geography	0	0	2	1	0	2	2	1	0	1	1	0	1	11
Language	0	2	1	1	0	0	0	2	1	1	0	1	0	9
Poverty	4	6	5	6	10	6	12	10	16	8	3	4	1	91
Prisoner/Criminal Record	5	2	3	3	6	9	6	3	4	5	0	2	1	49
Refugee	0	0	0	0	0	0	1	2	1	0	1	4	1	10
Religion	2	1	0	0	0	0	1	0	0	0	2	5	2	13
Section 15 General	3	2	8	9	2	2	1	0	0	0	0	7	0	34
Sex	3	6	9	17	18	15	11	17	11	15	15	9	7	153
Sexual Orientation	6	10	10	9	6	7	8	10	9	18	8	4	1	106
Transgendered	0	1	1	1	3	0	2	1	0	0	0	2	0	11
Unknown [3]	0	1	2	0	0	0	0	0	0	0	6	4	2	15
Other [4]	5	4	3	6	5	9	9	13	20	12	3	3	0	92
Total	**57**	**88**	**113**	**139**	**125**	**132**	**149**	**135**	**150**	**111**	**100**	**111**	**45**	**1455**

1 Please note that several applications include more than one ground of discrimination but only the most dominant ground is listed in this table.

2 Applications involving all of the following grounds of discrimination: colour, race, national origin and ethnic origin.

3 Applications involving no known ground of discrimination.

4 Applications involving a ground of discrimination other than those listed in this table.

Table 3 – Breakdown of Decisions Made by the Equality Rights Panel [1]
October 24, 1994 – September 25, 2006

	Decision Pending	Panel/Admin Rejection	Applicant Withdrawn	Panel Granted	Total
Aboriginal	19	50	15	188	272
Age	0	12	2	30	44
Citizenship	2	13	3	22	40
Colour/Race/Ethnicity/Nationality					
Colour	0	5	2	10	17
Race	14	27	8	101	150
National Origin	0	6	2	6	14
Ethnicity	1	15	2	27	45
General [2]	2	1	1	23	27
Disability	18	54	9	114	195
Family/Marital/Parental	3	30	3	21	57
Geography	1	8	1	1	11
Language	0	4	0	5	9
Poverty	2	19	4	66	91
Prisoner/Criminal Record	3	11	3	32	49
Refugee	2	2	0	6	10
Religion	0	6	0	7	13
Section 15 General	1	1	2	31	35
Sex	13	33	4	103	153
Sexual Orientation	1	21	4	80	106
Transgendered	1	2	1	7	11
Unknown [3]	4	6	1	0	11
Other [4]	9	50	7	29	95
Total	**96**	**376** [5]	**74**	**909** [6]	**1455**

Acceptance Rate = 62.5%

1 Please note that several applications include more than one ground of discrimination, but only the most dominant ground is listed in this table.

2 Applications involving all of the following grounds of discrimination: colour, race, national origin and ethnic origin.

3 Applications involving no known ground of discrimination.

4 Applications involving a ground of discrimination other than those listed in this table.

5 See Table 5 for a further breakdown.

6 See Table 4 for a further breakdown.

Table 4 – Breakdown of Types of Funding by the Equality Rights Panel [1]
October 24, 1994 – September 25, 2006

	Case Development	Case Funding	Impact Study	Program Promotion & Access and Negotiation	Total
Aboriginal	59	97	7	24	187
Age	8	17	2	4	31
Citizenship	4	15	0	2	21
Colour/Race/Ethnicity/ Nationality					
Colour	2	6	0	2	10
Race	15	30	5	51	101
National Origin	4	3	0	0	7
Ethnicity	6	11	0	10	27
General [2]	6	5	0	13	24
Disability	27	61	5	20	113
Family/Marital/Parental	5	17	0	0	22
Geography	0	0	0	1	1
Language	1	3	0	1	5
Poverty	13	28	3	22	66
Prisoner/Criminal Record	9	18	1	4	32
Refugee	0	6	0	0	6
Religion	0	3	0	4	7
Section 15 General	1	8	0	21	30
Sex	18	41	5	39	103
Sexual Orientation	8	45	4	23	80
Transgendered	1	0	0	6	7
Unknown [3]	0	0	0	0	0
Other [4]	1	2	7	19	29
Total	**188**	**416** [5]	**39**	**266**	**909**

1 Please note that several applications include more than one ground of discrimination, but only the most dominant ground is listed in this table.

2 Applications involving all of the following grounds of discrimination: colour, race, national origin and ethnic origin.

3 Applications involving no known ground of discrimination.

4 Applications involving a ground of discrimination other than those listed in this table.

5 See Table 6 for a further breakdown.

Table 5 – Breakdown of Unsuccessful Equality Rights Applications [1] October 24, 1994 – September 25, 2006

	No Federal Link [2]	Not a Test Case [3]	Duplication [4]	Canadian Human Rights Act [5]	Insufficient Funds [6]	Not Eligible Applicant [6]	Not Strategic Use of Funding [6]	Total
Aboriginal	8	30	10	1	0	0	1	50
Age	4	5	2	0	0	0	1	12
Citizenship	2	9	1	0	0	0	0	12
Colour/Race/Ethnicity/ Nationality								
Colour	0	3	0	0	0	3	0	6
Race	7	16	2	0	1	0	1	27
National Origin	3	3	0	0	0	0	0	6
Ethnicity	3	10	0	1	1	0	0	15
General [7]	1	0	0	0	0	0	0	1
Disability	22	24	6	0	0	1	2	55
Family/Marital/Parental	9	19	1	0	0	0	0	29
Geography	0	8	0	0	0	0	0	8
Language	3	1	0	0	0	0	0	4
Poverty	14	3	2	0	0	0	1	20
Prisoner/Criminal Record	4	6	0	0	0	1	0	11
Refugee	0	2	0	0	0	0	0	2
Religion	4	1	1	0	0	0	0	6
Section 15 General	1	0	0	0	0	0	0	1
Sex	9	17	3	0	0	1	3	33
Sexual Orientation	0	11	6	0	0	2	2	21
Transgendered	0	1	0	1	0	0	0	2
Unknown [8]	4	1	0	0	0	1	0	6
Other [9]	23	25	0	0	0	0	1	49
Total	**121**	**195**	**34**	**3**	**2**	**9**	**12**	**376**

1– Please note that several applications include more than one ground of discrimination, but only the most dominant ground is listed in this table. **2–** The CCPC's Contribution Agreement states that cases which receive funding must challenge a federal law, policy or practice and cannot challenge a provincial or territorial law, policy or practice. These applications did not receive funding because they did not meet this requirement. Either they challenged provincial government action or they did not challenge government action at all. **3–** A "test case" is a legal case which deals with a problem or raises an argument that has not already been decided by the courts and has the potential to stop discrimination or improve the way the law works for members of a disadvantaged group or groups in Canada. These are applications where the Equality Rights Panel found that the proposed challenge was not a strong test case based on section 15 of the *Canadian Charter of Rights and Freedoms*. Common reasons leading to such a decision by the Panel are: the case, if successful, will benefit only the individual involved as opposed to a broader group of equality seekers; the case does not provide the opportunity to advance equality for an historically disadvantaged group; and/or the equality issue in the case has already been determined by the courts. **4–** These applications covered legal issues already funded under the Program or already before the courts. The CCPC's Contribution Agreement does not allow it to fund such "duplicate" cases. **5–** These applications involved complaints under the *Canadian Human Rights Act*. The CCPC's Contribution Agreement prevents it from funding such cases. **6–** These categories were introduced during the fiscal year 2004/05 to reflect more specifically the reasons the Panel could not accord funding. **7–** Applications involving all of the following grounds of discrimination: colour, race, national origin and ethnic origin. **8–** Applications involving no known ground of discrimination. **9–** Applications involving a ground of discrimination other than those listed in this table.

Table 6 – Breakdown of Case Funding Granted by the Equality Rights Panel [1]
October 24, 1994 – September 25, 2006

	First Instance	Appeal	Supreme Court of Canada	Total
Aboriginal	69 (7 interventions)	13 (4 interventions)	15 (10 interventions)	97
Age	9	3	5 (1 intervention)	17
Citizenship	7	2	6 (3 interventions)	15
Colour/Race/Ethnicity/ Nationality				
Colour	2	1	3 (2 interventions)	6
Race	13 (3 interventions)	5 (2 interventions)	12 (8 interventions)	30
National Origin	3	0	0	3
Ethnicity	7 (2 interventions)	3 (2 interventions)	1 (1 intervention)	11
General [2]	2 (1 intervention)	2 (1 intervention)	1	5
Disability	22 (2 interventions)	20 (8 interventions)	19 (10 interventions)	61
Family/Marital/Parental	9	5 (1 intervention)	3 (1 intervention)	17
Geography	0	0	0	0
Language	3 (1 intervention)	0	0	3
Poverty	16 (2 interventions)	5 (2 interventions)	7 (5 interventions)	28
Prisoner/Criminal Record	4 (1 intervention)	6 (5 interventions)	8 (7 interventions)	18
Refugee	5	0	1 (1 intervention)	6
Religion	1	0	2 (2 interventions)	3
Section 15 General	1	0	7 (5 interventions)	8
Sex	18 (2 interventions)	11 (6 interventions)	12 (9 interventions)	41
Sexual Orientation	16 (4 interventions)	15 (9 interventions)	14 (13 interventions)	45
Transgendered	0	0	0	0
Unknown [3]	0	0	0	0
Other [4]	1	1 (1 intervention)	0	2
Total	**208**	**92**	**116**	**416**

1 Please note that several applications include more than one ground of discrimination, but only the most dominant ground is listed in this table.

2 Applications involving all of the following grounds of discrimination: colour, race, national origin and ethnic origin.

3 Applications involving no known ground of discrimination.

4 Applications involving a ground of discrimination other than those listed in this table.

LANGUAGE RIGHTS PROGRAM

Breakdown of funding applications granted in 2006-2007

The Court Challenges Program received 16 applications for support for language-related cases and projects during this fiscal year. In 2006/2007, the Language Panel granted funding for 13 applications in the following categories:

Language Rights	% of Total	Number of Cases	Amount Granted
Case Development	0.8	1	$2,000
Case Funding	84.6	6	$212,612
Impact Studies	0	0	$(1,293)
Program, Promotion & Access and Negotiation	14.6	6	$37,230
Total	100	13	$250,549

(**Note**: The figures noted above represent the total amount of funds granted in this fiscal year including funds granted to applications received in previous fiscal years but dealt with in this fiscal year. The total amount granted in each category also includes funds withdrawn from files of previous fiscal years where a portion of the funds granted were not used.)

Table 7 – Breakdown of Language Applications Received
October 24, 1994 – September 25, 2006

Province/ Territory	Yukon	Nunavut [1]	Northwest Territories	British Columbia	Alberta	Saskatchewan	Manitoba	Ontario	Québec	New Brunswick	Nova Scotia	Prince Edward Island	Newfoundland Labrador	Total
% Canada's Pop.	0.1	0.1	0.1	12.9	9.3	3.4	3.8	37.6	24.7	2.5	3.1	0.5	1.9	100%
1994/95	0	0	1	1	0	0	2	7	1	2	0	0	0	**14**
% of Applications	0.0	0.0	7.1	7.1	0.0	0.0	14.3	50.1	7.1	14.3	0.0	0.0	0.0	100%
1995/96	0	0	1	3	3	1	4	1	5	2	0	2	1	**23**
% of Applications	0.0	0.0	4.3	13.1	13.1	4.3	17.5	4.3	21.7	8.7	0.0	8.7	4.3	100%
1996/97	1	0	1	1	0	0	6	1	6	3	3	1	2	**25**
% of Applications	4.0	0.0	4.0	4.0	0.0	0.0	24.0	4.0	24.0	12.0	12.0	4.0	8.0	100%
1997/98	0	0	0	1	0	2	1	9	6	8	0	0	0	**27**
% of Applications	0.0	0.0	0.0	3.7	0.0	7.4	3.7	33.3	22.2	29.7	0.0	0.0	0.0	100%
1998/99	0	0	0	0	3	1	7	8	2	1	2	3	2	**29**
% of Applications	0.0	0.0	0.0	0.0	11.5	3.9	23.1	27.0	3.9	3.9	7.6	11.5	7.6	100%
1999/00	3	1	2	1	5	0	11	4	7	6	3	0	0	**43**
% of Applications	6.5	2.4	4.3	2.4	10.7	0.0	26.1	10.7	17.4	13.0	6.5	0.0	0.0	100%
2000/01	1	0	5	0	3	0	10	7	8	11	2	0	3	**50**
% of Applications	2.0	0.0	10.0	0.0	6.0	0.0	20.0	14.0	16.0	22.0	4.0	0.0	6.0	100%
2001/02	1	0	0	1	0	4	10	7	5	11	3	1	0	**43**
% of Applications	2.3	0.0	0.0	2.3	0.0	9.3	23.3	16.3	11.6	25.6	7.0	2.3	0.0	100%
2002/03	2	1	0	0	2	6	10	6	2	7	7	1	0	**44**
% of Applications	4.6	2.3	0.0	0.0	4.5	13.6	22.7	13.6	4.6	15.9	15.9	2.3	0.0	100%
2003/04	0	0	2	0	1	1	12	8	1	4	2	0	0	**31**
% of Applications	0.0	0.0	6.5	0.0	3.2	3.2	38.7	25.8	3.2	12.9	6.5	0.0	0.0	100%
2004/05	0	0	0	0	5	1	4	7	6	6	7	4	3	**43**
% of Applications	0.0	0.0	0.0	0.0	11.6	2.3	9.3	16.3	14.0	14.0	16.3	9.3	7.0	100%
2005/06	0	0	0	0	4	0	6	15	3	1	1	1	0	**31**
% of Applications	0.0	0.0	0.0	0.0	12.9	0.0	19.4	48.4	9.7	3.2	3.2	3.2	0.0	100%
2006/07	1	1	0	0	1	0	5	3	2	1	1	1	0	**16**
% of Applications	6.3	6.3	0.0	0.0	6.3	0.0	31.2	18.6	12.4	6.3	6.3	6.3	0.0	100%
Total	9	3	12	8	27	16	88	83	54	63	31	14	11	**419**
% of Applications	2.1	0.7	2.9	1.9	6.4	3.8	21.0	19.8	12.9	15.0	7.4	3.3	2.6	100%

1 Nunavut became a Territory in April 1999.

Table 8 – Breakdown of Language Applications Received October 24, 1994 – September 25, 2006

	94/95	95/96	96/97	97/98	98/99	99/00	00/01	01/02	02/03	03/04	04/05	05/06	06/07	Total
Education Rights	11	11	14	19	14	16	26	20	22	15	14	8	5	195
Judicial Rights	1	3	2	1	2	5	0	5	9	5	12	4	3	52
Language of Work, Communication & Service	1	6	6	6	3	9	13	13	6	4	9	11	2	89
Legislative Bilingualism	1	2	2	0	2	1	1	0	2	1	0	1	0	13
Other	0	1	1	1	8	12	10	5	5	6	8	7	6	70
Total	**14**	**23**	**25**	**27**	**29**	**43**	**50**	**43**	**44**	**31**	**43**	**31**	**16**	**419**

Table 9 – Breakdown of Decisions Made by the Language Rights Panel October 24, 1994 – September 25, 2006

	Decision Pending	Panel/Admin Rejection	Applicant Withdrawn	Panel Granted	Total
Education Rights	12	26	3	154	195
Judicial Rights	4	9	2	37	52
Language of Work, Communication & Service	7	17	0	65	89
Legislative Bilingualism	0	7	0	6	13
Other	1	13	1	55	70
Total	**24**	**72** [1]	**6**	**317** [2]	**419**

Acceptance Rate = 75.6%

1 See Table 11 for a further breakdown.

2 See Table 10 for a further breakdown.

Table 10 – Breakdown of Type of Funding Granted by the Language Rights Panel October 24, 1994 – September 25, 2006

	Case Development	Case Funding	Impact Study	Program Promotion & Access and Negotiation	Total
Education Rights	23	89	9	33	154
Judicial Rights	7	23	2	5	37
Language of Work, Communication & Service	19	36	2	8	65
Legislative Bilingualism	1	4	1	0	6
Other	7	8	12	28	55
Total	**57**	**160** [1]	**26**	**74**	**317**

1 See Table 12 for a further breakdown.

Table 11 – Breakdown of Unsuccessful Language Rights Applications October 24, 1994 – September 25, 2006

	No Constitutional Link [1]	Not a Test Case [2]	Duplication [3]	Other [4]	Insufficient Funds [5]	Not Eligible Applicant [5]	Not Strategic Use of Funding [5]	Total
Education Rights	3	10	7	4	0	0	2	26
Judicial Rights	2	2	1	2	0	0	2	9
Language of Work, Communication & Service	4	8	2	0	0	1	2	17
Legislative Bilingualism	1	2	0	1	0	3	0	7
Other	3	5	2	1	0	0	2	13
Total	**13**	**27**	**12**	**8**	**0**	**4**	**8**	**72**

1 The CCPC's Contribution Agreement states that cases which receive funding must advance official language minority rights as guaranteed by the interpretation or application of section 93 or 133 of the *Constitution Act, 1867*, or as guaranteed in section 23 of the *Manitoba Act, 1870*, sections 16 to 23 of the *Constitution Act, 1982* or parallel constitutional provisions.

2 A "test case" is a legal case which deals with a problem or raises an argument for the resolution of a linguistic rights issue. These are applications where the Language Rights Panel found that the proposed challenge was not a strong test case. Common reasons leading to such a decision by the Panel are: the case, if successful, will benefit only the individual involved as opposed to a broader group of official language minorities; the case does not provide the opportunity to advance the linguistic rights of the official language minority; and/or the language issue in the case has already been determined by the courts.

3 These applications covered legal issues already funded under the Program or already before the courts. The CCPC's Contribution Agreement does not allow it to fund such "duplicate" cases.

4 Applications involving a reason other than those listed in this table.

5 These categories were introduced during the fiscal year 2004/05 to reflect more specifically the reasons the Panel could not accord funding.

Table 12 – Breakdown of Case Funding Granted by the Language Rights Panel October 24, 1994 – September 25, 2006

	First Instance	Appeal	Supreme Court of Canada	Total
Education Rights	60 (10 interventions)	16 (9 interventions)	13 (10 interventions)	89
Judicial Rights	7	12 (4 interventions)	4 (3 interventions)	23
Language of Work, Communication & Service	22 (3 interventions)	11 (2 interventions)	3 (3 interventions)	36
Legislative Bilingualism	1	1 (1 intervention)	2 (1 intervention)	4
Other	2	5 (3 interventions)	1	8
Total	**92**	**45**	**23**	**160**

Resources

The Court Challenges Program has developed various information materials to promote the Program and its objectives. The following documents are available to the public for free upon request.

ANNUAL REPORTS

Annual reports produced by the Court Challenges Program of Canada since 1994-1995 are available on our website at *http://www.ccppcj.ca*

Copies are available in English, French and on computer diskette.

BROCHURES

Court Challenges Program of Canada – a brochure on the mandate and the different types of funding available from the Program. Available in English, French, audiotape, large print, braille, or on computer diskette.

Your Right to Equality – a brochure on equality rights and the Court Challenges Program. Available in English, French, audiotape, large print, braille, or on computer diskette.

Information Kit – Court Challenges Program of Canada – a series of information sheets which explain how to apply for funding from the Program. Available in English, French, audiotape, large print, braille, or on computer diskette.

PAPERS

Following is a sample of discussion papers produced through the Court Challenges Program in the last five years. Previous and various other papers are available on our website at *http://www.ccppcj.ca*

Analyse d'impact de la décision de la Cour suprême du Canada dans l'arrêt *Arsenault-Cameron c. L'Île-du-Prince-Édouard*, M^{e} Paul Rouleau, February 2001. Available in French only.

Costs in Charter Litigation, Joseph J. Arvay, Q.C. and Kathryn Chapman, February 2003. Available in French and English.

Étude d'impact de la décision Frank Lambert par la Cour d'appel du Québec Montréal, Claude Cousineau, October 2005. Available in French only.

L'impact de la jurisprudence récente sur le statut des droits linguistiques en Saskatchewan, Peter T. Berbusch, November 2002. Available in French only.

Le droit à l'égalité des femmes doublement discriminées, Action travail des femmes, December 2003. Available in French only.

Inaction Speaks Louder Than Words: Section 15 and the Alberta Child Welfare Act, S. Hutcheon, 2004. Available in English only.

Projet de commentaire - L'arrêt *Colombie-Britanique (Ministre des Forêts) c. Bande indienne Okanagan* et les litiges en matière de droits linguistiques, Mark Power, November 2005. Available in French only.

Social Condition as a Ground of Discrimination, Front commun des personnes assistées sociales du Québec, May 2004. Available in English only.

Taylor v. Canada (Attorney General) – Discriminatory Judicial Conduct and the Charter, Mark Carrié and Joanne St. Lewis, June 2005. Available in English only.

The implications of Okanagan Indian Band for Public Interest Litigants: A Strategic Discussion Paper, Chris Tollefson, November 2005. Available in English and French.

The war against Equality: Racial Profiling, and Anti-Terrorism in Canada, Jewel Amoah, October, 2005. Available in English only.

Transgender and Women's Substantive Equality: Discussion Paper, Consultation Paper, Bibliography, Case Law Summaries, Margaret Denike, Sal Renshaw & CJ Rowe, September 2003. Available in French and English.

Twenty Years Of Equality Rights: Reclaiming Expectations, Bruce Porter, October 2004. Available in English only.

NEW

Equality Rights and Environmental Rights: A Discussion Paper, Vincent Calderhead, September 2006. Available in English and French.

Litigating Section 15: The Path to Substantive Equality in Charter Adjudication, Melina Buckley, November 2005. Available in English and French.

Discrimination in the Human Rights Context: Why the Law Approach Should Not Be Imported, Women's Legal Education and Action Fund, October 2006. Available in English Only.

Race Based Equality Arguments under the Charter: Is this Ground we want to break? Sonia Lawrence, April 2006. Available in English and French.

"Haves and Have-Nots": Section 15(1) Equality Rights and the State of Immigration Law under IRPA, Clara Ho, April 2006. Available in English and French.

Disability and Race in the Context of Section 15 Jurisprudence, Zephania Matanga, October 29 2005. Available in English and French.

WEBSITE OF THE COURT CHALLENGES PROGRAM

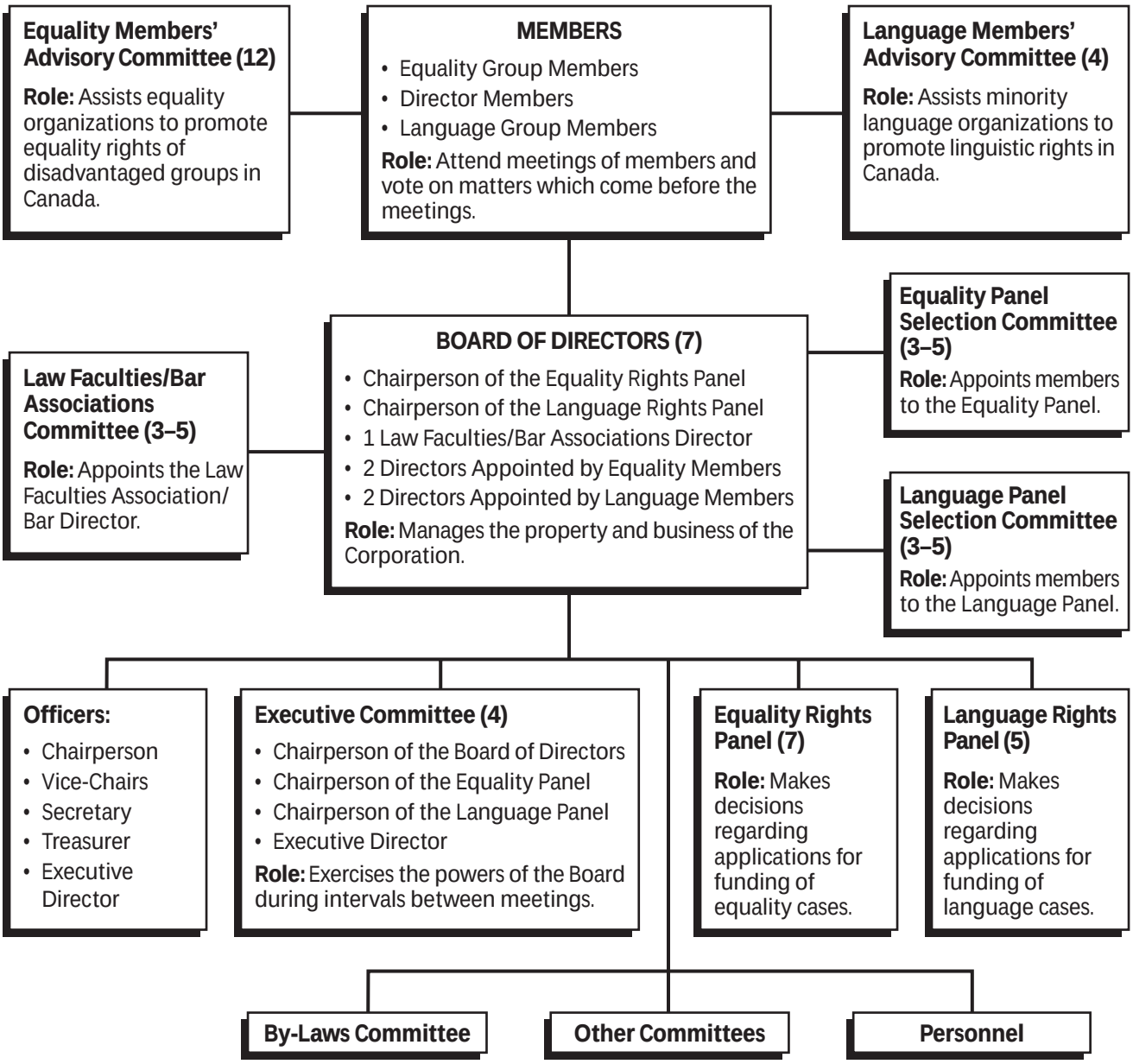
The Program has also developed a web site at **www.ccppcj.ca**. Information contained on the site includes the following materials:

- the Program's organizational chart,
- the Program's general brochure,
- *Your Right to Equality* brochure,
- the information kit,
- biographies of Board members, Panel members and staff, and
- information about the Program's logo.

In addition to the on-going collection of Program materials, links to other websites and other information is available in the library. The library also contains an alphabetical listing of key words and can be searched for words or phrases.

Listings and Contacts

COURT CHALLENGES PROGRAM ORGANIZATIONAL CHART



Board of Directors

The 2006/2007 Board of Directors consisted of:

Chair and Representative of Language Members:
GUY MATTE (Ontario) – Former Managing Director of the Association des enseignantes et enseignants franco-ontariens (AEFO). Member of the board of the Ontario Teachers' Pension Plan and of the Comité syndical francophone de l'éducation et de la formation.

Vice-Chair and Co-Chair of the Equality Panel:
LINDA JONES (British Columbia) – Linda raised her two children on welfare and helped start a Welfare Rights Group in the Surrey/White Rock area in the 1980's. From 1989-2001 she was an organizer with End Legislated Poverty – at the time the largest coalition of anti-poverty, union and church groups in BC.

Vice-Chair and Co-Chair of the Language Panel:
KATHLEEN TANSEY (Québec) – Lawyer specialized in Labour and Employment Law and member of the Québec and Ontario Bar.

Treasurer and Representative of the Law Faculties/Bar Associations:
KEN NORMAN (Saskatchewan) – Professor with the University of Saskatchewan in Saskatoon and author of various reports on human rights, labour relations, administrative and constitutional law.

Representative of Language Members:
MICHAEL BERGMAN (Québec) – Lawyer in private practice with Bergman and Associates in Montréal with expertise in minority language issues, particularly as they relate to Québec.

Representative of Equality Members:
BONNIE MORTON (Saskatchewan) – Member of the Charter Committee on Poverty Issues (CCPI) and the National Anti-Poverty Organization.

Representative of Equality Members:
SANDA RODGERS (Ontario) – Professor Rodgers is former Dean of the University of Ottawa's Faculty of Law where she currently teaches a course in medical-legal problems. She is an expert in Canadian health law, more particularly in women's health.

For more information on our Board members, please refer to our website: **www.ccppcj.ca**.

Panel Selections Committees

The 2006/2007 Language Panel Selection committee consisted of:

MICHÈLE CARON (New Brunswick) – Professor of Law at the University of Moncton.

GÉRARD LÉVESQUE (Ontario) – Lawyer and member of the Association de juristes d'expression française de l'Ontario.

LISE ROUTHIER-BOUDREAU (Ontario) – President of the Fédération des communautés francophones et acadienne.

ERIC SUTTON (Québec) – Lawyer in private practice with the firm Girouard, Peris, Goldenberg, Pappas and Sutton.

The 2006/2007 Equality Panel Selection committee consisted of:

WILLIAM BLACK (British Columbia) – Former Professor of Law at the University of British Columbia.

LUCIE LAMARCHE (Québec) – Professor of Law at the University of Québec in Montreal.

AMY GO (Ontario) – Activist with racial minority and women's communities in Toronto.

CARMEN PAQUETTE (Ontario) – Consultant and community activist in Ontario

MARGOT YOUNG (British Columbia) – Professor of Law at the University of British Columbia

Language Rights Panel

The 2006/2007 Language Rights Panel consisted of:

Co-Chairs:

ANDRÉ OUELLETTE (Alberta) – Lawyer with Ouellette Rice in Calgary. Involved in pleading training sessions in French Language and first lawyer to plead cases in French before a jury in Alberta.

KATHLEEN TANSEY (Québec) – Lawyer specialized in Labour and Employment Law and member of the Ontario and Quebec Bar.

Panel Members:

GABRIEL ARSENAULT (Prince Edward Island) – Superintendent of Education of the Commission scolaire de langue française de l'Î.-P.-É. for 17 years, until his retirement in June 2005. He was involved in several other associations like the Association canadienne d'éducation de langue française, the Société éducative de l'Î.-P.-É, and the Regroupement national des directions générales en éducation.

ANDRÉ BRAËN (Ontario) – Lawyer and professor with the University of Ottawa with extensive knowledge, experience and expertise with language rights.

LÉO ROBERT (Manitoba) – Former Executive Director with the Division scolaire francophone du Manitoba and community activist in the francophone community.

For more information on our Language Rights Panel members, please refer to our website: **www.ccppcj.ca**.

Equality Rights Panel

The 2006/07 Equality Rights Panel consisted of:

Co-Chairs:

LORENA FONTAINE (Saskatchewan) – Assistant Professor for the First Nations University of Canada. Lorena has worked with Aboriginal political organizations for the past 15 years.

LINDA JONES (British Columbia) – Linda raised her two children on welfare and helped start a Welfare Rights Group in the Surrey/White Rock area in the 1980's. From 1989-2001 she was an organizer with End Legislated Poverty – at the time the largest coalition of anti-poverty, union and church groups in BC.

Panel Members:

SHARRYN AIKEN (Ontario) – Lawyer and Professor of Law at Queens University and author of numerous articles on Canadian refugee policies, racism and human rights.

RAJ ANAND (Ontario) – Partner with WeirFoulds LLP where he practises in the areas of human rights, constitutional and administrative law, labour relations, civil litigation, professional negligence and discipline.

DIANNE POTHIER (Nova Scotia) – Professor of Law (Dalhousie Law School) at Dalhousie University and author of numerous articles in the areas of labour law, human rights and equality rights, with specific emphasis on gender, disability and their intersections.

ROBERT SAINT-LOUIS LLB, LLM (Québec) – Consultant on unemployment and disabilities issues.

CHARLES SMITH (Ontario) – Currently Equity Advisor to the Canadian Bar Association and Lecturer, Cultural Pluralism in the Arts, at the University of Toronto Scarborough. Charles is also consultant to the Ontario Human Rights Tribunal regarding OHRC and *McKinnon v. HMQ et al*.

For more information on our Equality Rights Panel members, please refer to our website: **www.ccppcj.ca**.

Advisory Committees

The Language Advisory Committee

In 2006/2007, the Language Advisory Committee consisted of the following organizations and individuals:

Commission nationale des parents francophones – MURIELLE GAGNÉ-OUELLETTE

Fédération des associations de juristes d'expression française de common law – ALAIN LAURENCELLE

Fédération des communautés francophones et acadienne du Canada – DIANE CÔTÉ

Québec Community Groups Networks – DEBORAH HOOK

The Equality Advisory Committee

In 2006/2007, the Equality Advisory Committee consisted of the following organizations and persons:

Action Committee of People with Disabilities – JOANNE NEUBAUER

African Canadian Legal Clinic – MARGARET PARSONS

Association multiculturelle francophone de l'Alberta – JEAN EDDY KAMBA

Canadian Institute of Islamic Studies
– DR YAQOOB KHAN

Charter Committee on Poverty Issues
– BONNIE MORTON

Equality for Gays and Lesbians Everywhere
– GILLES MARCHILDON

Minority Advocacy and Rights Council
– INDRA SINGH

National Anti-Poverty Organization
– ROB RAINER

National Association of Women and the Law
– KIM BROOKS

PEI Council of the Disabled – BARRY SCHMIDL

Québec Native Women's Association
– MARTINE CÔTÉ

Women's Legal Education and Action Fund
– FIONA SAMPSON

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Director of Language Rights
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Executive Director
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CONTACTS

You can contact the Court Challenges Program of Canada for more information about the Program itself. You can call, write, fax or e-mail us.

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